

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
of the GWF Tracy Peaker Project)	01-AFC-16
in San Joaquin County)	
(GWF Energy LLC))	
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HOLIDAY INN EXPRESS HOTEL AND SUITES
TRACY and YUBA ROOMS
3751 TRACY BOULEVARD
TRACY, CALIFORNIA

THURSDAY, JANUARY 24, 2002

5:30 p.m.

Reported by:
Valorie Phillips
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Presiding Member

Cheryl Tompkin, Hearing Officer

Ellen Townsend-Smith, Advisor

STAFF AND CONSULTANTS PRESENT

Kerry A. Willis, Staff Counsel

Cheri Davis, Project Manager

PUBLIC ADVISER

Grace Bos

APPLICANT

John P. Grattan, Attorney
Grattan and Galati

D.W. Wheeler, Vice President
GWF Power Systems Company, Inc.

David A. Stein, Senior Project Manager
URS Corporation

INTERVENORS

Robert Sarvey

Jim Hooper

Irene Sundberg

Charles Tusso

Howard L. Seligman, Attorney
Seligman and Willett, Inc.
representing Tusso Family

Bill Dean
Planning Division
City of Tracy

INTERVENORS

Ena Aguirre

Michael Weed, Attorney
representing the Cheng Family

George M. Carpenter, Jr., Attorney
Hefner, Stark and Marois, LLP
representing Valley Land Company

Dennis C. Noble, Attorney, and
representing Traina and Coccores Families

ALSO PRESENT

Kelly Lewis, Board Trustee
Tracy Unified School District

Susan Sarvey
and representing Intervenor Irene Sundberg

Rick Shewey

Edward Rogers

Kay Pappas

Monica Lowney

Kevin Stewart

Anika O'Brien

Paula Buenavista

Emmett Lee

Brian Pekari

Tom Celillo

James Miner

Clare Atkins
Jefferson School District

ALSO PRESENT

Harold Timmins

Greg Pace

Ryan Yockey

Wayne Yamamoto

Lance Chun

Blane Hill
Latter Day Saints Church

Scott Stewart

Carolyn Yochum

Larry W. Gamino

JoAnne Lund

Tim Lund

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1 P R O C E E D I N G S

2 5:30 p.m.

3 PRESIDING MEMBER PERNELL: Good evening
4 and welcome to the prehearing conference on the
5 application for certification for the GWF Tracy
6 Peaker project; docket number 01-AFC-16.

7 Before we begin I'd like to introduce
8 the individuals seated at the dais and identify
9 the Energy Commission's Committee assigned to
10 review this project.

11 My name is Commissioner Robert Pernell.
12 I am the Presiding Member on the project.
13 Commissioner Robert Laurie, the Associate Member
14 on the Committee, is not able to attend this
15 evening.

16 Seated to my left is my Advisor, Ellie
17 Townsend-Smith. And seated to my right is Cheryl
18 Tompkin, who will be our Hearing Officer for this
19 evening.

20 Before we begin I'd like Ms. Davis from
21 our staff to give us a brief overview of the
22 process up to this point, which is up until the
23 prehearing conference. Ms. Davis.

24 MS. DAVIS: I'm Cheri Davis. Can you
25 hear me? I'm the Project Manager representing the

1 Energy Commission Staff. We do an independent
2 review of the application for certification filed
3 by GWF.

4 The application for certification was
5 received on August 16th, at which time copies were
6 sent to libraries; we notified property owners
7 within 1000 feet of the power plant, within 500
8 feet of all linears. And put flyers in The Tracy
9 Press to alert the public to the upcoming
10 proceedings.

11 PRESIDING MEMBER PERNELL: Can everyone
12 hear?

13 (Pause.)

14 MS. DAVIS: One of these microphones is
15 so she can transcribe what I'm saying.

16 The application for certification again
17 was received on August 16th. It was accepted as
18 data adequate for the four-month process on
19 October 17th.

20 We held our first workshop, a public
21 workshop, here in Tracy in this very room on
22 November 20th. It was followed eight days later
23 by an informational hearing and site visit held by
24 the Committee.

25 On December 5th the Committee rescinded

1 the waiver that made the project data adequate for
2 the four-month process. And it was at that time
3 data adequate for the 12-month process.

4 Staff issued it's staff assessment on
5 December 28th. There are some copies on the back
6 table. We then held a workshop that was noticed
7 for January 8th, and January 9th if needed. We
8 managed to get through all the subject matter on
9 January 8th, and so we did not hold the January
10 9th workshop.

11 Staff then issued its supplement to the
12 staff assessment on January 18th. We issued an
13 incomplete supplement to the staff assessment in
14 order to meet the Committee's schedule. However,
15 we are in the process of issuing another
16 supplement to the staff assessment that will
17 replace the initial one. That contains all of
18 staff's testimony to this project.

19 PRESIDING MEMBER PERNELL: Okay, thank
20 you, Ms. Davis.

21 Again, the purpose of this hearing is to
22 assess the parties' readiness for evidentiary
23 hearings. And to permit all parties, staff,
24 applicant and intervenors, to present their
25 respective opinions concerning which substantive

1 topic areas are ready for evidentiary hearing;
2 which areas require further analysis, including
3 the nature of and timeframe of any such analysis;
4 which topic areas the parties have reached
5 agreement upon; and which areas remain subject to
6 disagreement and require adjudication.

7 All parties should be prepared to
8 identify proposed witnesses, as well as time
9 required for testimony and/or cross-examination.

10 I want to emphasize that this is not an
11 evidentiary hearing. We're not here to take
12 comments on substantive issues. This is a
13 scheduling hearing which will be used to determine
14 how evidence will be presented at the evidentiary
15 hearing.

16 However, the Committee is sensitive to
17 the public's interests and concerns regarding the
18 proposed Tracy Peaker project, and the Committee
19 will permit the public comments at the end of the
20 prehearing conference.

21 At this point if there's no questions on
22 the procedure and how the hearing will be
23 conducted, I will turn this over to Ms. Tompkin,
24 who is our Hearing Officer.

25 And before I do that, are there any

1 questions on why we're here tonight and what this
2 hearing is about? I know there's been some
3 misconceptions about the various peaker projects,
4 but, again, this is a prehearing conference, and
5 not an evidentiary hearing.

6 Seeing none, I'll turn this over to our
7 Hearing Officer.

8 HEARING OFFICER TOMPKIN: Thank you,
9 Commissioner Pernell. At this point I'm going to
10 ask the intervenors that previously filed for that
11 status, CURE, Robert Sarvey, Irene Sundberg and
12 James Hooper, to come forward and sit at the table
13 where there are four chairs. I neglected to have
14 you do that earlier.

15 (Pause.)

16 PRESIDING MEMBER PERNELL: While the
17 intervenors are coming up to the table everyone
18 who wants to speak tonight, we're asking you to
19 fill out a blue card. And the Hearing Officer
20 will go through this in more detail, but just to
21 let you know that you should fill out a blue card
22 if you're wishing to speak before the Committee
23 this evening.

24 HEARING OFFICER TOMPKIN: All right,
25 just to explain a little bit about the process.

1 Initially what I'm going to do is ask the parties
2 to identify themselves for the record.

3 I will then ask interested individuals
4 who are attending this hearing to identify
5 themselves by name and organization. If you are
6 not affiliated with an intervenor or organization,
7 please identify yourself as we proceed.

8 At this point I'm going to ask the
9 applicant to identify its representatives.

10 MR. WHEELER: Doug Wheeler representing
11 GWF. To my left is John Grattan, our counsel.
12 And Dave Stein, Project Manager from URS.

13 HEARING OFFICER TOMPKIN: Thank you, Mr.
14 Wheeler. And will staff please identify
15 themselves.

16 MS. WILLIS: Thank you. I'm Kerry
17 Willis, Staff Counsel. And to my left is Cheri
18 Davis who is the Project Manager.

19 HEARING OFFICER TOMPKIN: At this time
20 I'll ask are there any elected officials or
21 governmental agencies that wish to come forward
22 and identify themselves at this time? Please come
23 forward.

24 MR. DEAN: My name is Bill Dean; I'm
25 with the City of Tracy Planning Division. I'm

1 just here this evening to submit an application
2 for intervenor status. I just want that to be
3 known. And our City Council will be discussing
4 this issue on February 5th. So at this point I
5 don't have anything further to add, aside from the
6 fact that we are submitting an application for
7 intervenor status.

8 HEARING OFFICER TOMPKIN: I did receive
9 an application from the City of Tracy this morning
10 from Ms. Corbett, the City Attorney. Are you here
11 as the representative on that application?

12 MR. DEAN: That's correct, I am.

13 HEARING OFFICER TOMPKIN: Okay. Well,
14 we'll come back to that in a moment. Thank you.

15 Is there any other elected official or
16 governmental agency here tonight? Please come
17 forward.

18 MR. LEWIS: My name is Kelly Lewis, and
19 I'm on the Tracy Unified School District School
20 Board as a Trustee. Just to learn.

21 HEARING OFFICER TOMPKIN: Thank you. At
22 this time, then, I'm going to ask the intervenors
23 who have already been formally granted that status
24 to identify themselves for the record. And they
25 are seated at the table.

1 MR. SARVEY: Bob Sarvey.

2 HEARING OFFICER TOMPKIN: Let me explain
3 a little about the microphones for the record.
4 There are two sets of microphones. The black ones
5 that are connected to wires are for the recorder
6 for purposes of transcribing this hearing.

7 These other ones with the blue cords or
8 the cordless are for purposes of amplifying the
9 voices. So you have to speak into both of them.

10 MR. SARVEY: Bob Sarvey; intervene on
11 behalf of myself and my family.

12 HEARING OFFICER TOMPKIN: Thank you, Mr.
13 Sarvey, and I'm going to ask you to speak a little
14 bit louder because there are a number of people
15 here and they can't hear you unless you speak up.

16 MR. HOOPER: My name's Jim Hooper and
17 I'm here representing myself. I also happen to be
18 a teacher in the Tracy Unified School District,
19 and on the Board of the Sierra Delta Sierra Club
20 Group.

21 HEARING OFFICER TOMPKIN: All right,
22 thank you, Mr. Hooper. Is there a representative
23 for CURE here tonight? And is Irene Sundberg
24 present? No? All right.

25 Well, this morning and this afternoon we

1 also received several other petitions to intervene
2 in this matter. One was from the City of Tracy;
3 another was from Larry Cheng; a third was from
4 Dennis Noble; and the final application was from
5 Valley Land Company. Those were the only ones
6 that we have formally received at this time.

7 So would the representatives that I just
8 named please come forward and identify yourselves
9 for the record.

10 MR. WEED: My name is Michael Weed; I'm
11 representing the Cheng family, the petition filed
12 by Larry Cheng.

13 PRESIDING MEMBER PERNELL: Thank you.

14 MR. NOBLE: My name is Dennis Noble, I'm
15 representing the Traina family, Cocores family,
16 petition filed by myself.

17 PRESIDING MEMBER PERNELL: Thank you.

18 MR. CARPENTER: I'm George Carpenter.
19 I'm an attorney at Hefner, Stark and Marois in
20 Sacramento. And I'm here on behalf of Valley Land
21 Company.

22 PRESIDING MEMBER PERNELL: Thank you.

23 MR. TUSO: Charles Tusso, and I had
24 applied for intervenorship. I don't know if that
25 got through or not. That was on Tuesday. It's

1 okay? I also have my attorney here this evening,
2 Howard Seligman.

3 PRESIDING MEMBER PERNELL: And will you
4 be representing yourself or your attorney will be
5 representing you?

6 MR. TUSO: My attorney.

7 PRESIDING MEMBER PERNELL: Thank you.

8 HEARING OFFICER TOMPKIN: Step to the
9 mike, please.

10 MS. AGUIRRE: My name is Ena Aguirre and
11 I faxed the form as an intervenor to you people on
12 the 18th, I believe it was last Friday, or a week
13 ago Friday. And I don't know what happened to it.

14 HEARING OFFICER TOMPKIN: Well, we're
15 going to have to follow up maybe when we take a
16 recess on the applications of Mr. Tusso and Ms.
17 Aguirre, because we don't have those documents
18 before us.

19 Just a moment.

20 (Pause.)

21 HEARING OFFICER TOMPKIN: I just
22 received a copy of Mr. Tusso's application, which
23 evidently was received either yesterday afternoon
24 or this morning. So I'll add him to the list.

25 And, Ms. Aguirre, maybe you can check

1 with the Public Adviser regarding the status of
2 your petition and we'll find out what happened.

3 MS. AGUIRRE: They know about it because
4 they got it.

5 HEARING OFFICER TOMPKIN: All right,
6 well, we'll deal with that later in the
7 proceeding.

8 PRESIDING MEMBER PERNELL: Where's the
9 Public Adviser?

10 MS. AGUIRRE: The lady was here. She
11 knows about it.

12 MS. BOS: Yes, we did receive it; and
13 it's been, probably it was about a week ago I
14 would say.

15 HEARING OFFICER TOMPKIN: All right.

16 MS. TOWNSEND-SMITH: Was it docketed?

17 MS. BOS: Yes, it was.

18 MS. TOWNSEND-SMITH: Because I haven't
19 received it in my files at all.

20 HEARING OFFICER TOMPKIN: None of us
21 have received it.

22 MS. BOS: We'll check on it.

23 HEARING OFFICER TOMPKIN: All right.

24 MS. BOS: But she did intervene.

25 HEARING OFFICER TOMPKIN: I'm sorry,

1 ma'am, what was your name again? First name?

2 MS. AGUIRRE: It's Ena, E-n-a. Aguirre,
3 A-g-u-i-r-r-e.

4 HEARING OFFICER TOMPKIN: Thank you,
5 ma'am.

6 And also we have a representative for
7 the City of Tracy who was Bill Dean, is that
8 correct?

9 MR. DEAN: Yes.

10 HEARING OFFICER TOMPKIN: Who will serve
11 as an intervenor.

12 So at this time I'm going to ask Mr.
13 Grattan whether he has any objection to any of
14 these intervenors.

15 MR. GRATTAN: No, we have no objection
16 to any of the intervenors.

17 PRESIDING MEMBER PERNELL: Thank you,
18 Mr. Grattan. Hearing no objections to adding the
19 additional intervenors to the list, as the
20 Presiding Member I will grant intervenor status at
21 this time, and will issue a written order in the
22 next few days.

23 And I would also ask that those who are
24 intervenors need to take a seat in the front row
25 if you can. Those who have just been granted

1 intervenor status, either at the table or in the
2 front row, please.

3 HEARING OFFICER TOMPKIN: Thank you. At
4 this time I'm going to ask the Public Adviser to
5 come forward and identify yourself.

6 MS. BOS: My name is Grace Bos and I'm
7 the Associate Public Adviser. I'm the one that
8 has received all your applications in the last two
9 days. And so I'm glad finally to get to put a
10 face on it.

11 Mrs. Aguirre, I will certainly follow up
12 because I know I have received yours, as well.

13 I just want to make really clear that
14 the Public Adviser is not here to advocate on
15 anyone's behalf. We're just here to help you with
16 the process, help you with the paperwork, how to
17 word things. And basically if there are any kind
18 of problems you can call us. But we cannot
19 advocate on your behalf one way or another. We're
20 sort of an impartial party here.

21 But I have gotten to know some of you
22 pretty well. And I'll be here tonight. If any of
23 you have a blue card that if you're going to speak
24 this is the time to fill it out and I'll hand it
25 to the Commissioner.

1 Thank you.

2 HEARING OFFICER TOMPKIN: Ms. Bos,
3 before you leave I'm going to ask you to update us
4 on your efforts to contact the local residents and
5 interested groups.

6 MS. BOS: What we have done the last few
7 months, we have put an article in the school
8 newspaper. We put about 8000 flyers in The Tracy
9 Press newspaper. Of course, when it goes in it's
10 not always the day that you read the paper.

11 We put the application for certification
12 into the library, and asked them to also put up
13 posters that we mail to the libraries. And then
14 we get a card back saying yes, we put it up in the
15 library.

16 And, of course, the best way to know
17 about things is word of mouth, which some of you
18 have done.

19 As you know we're limited on funds so we
20 cannot put ads in the paper every day. But we're
21 here to help you and anything that we can do for
22 you to understand the process better we'll help
23 you.

24 HEARING OFFICER TOMPKIN: Thank you, Ms.
25 Bos. At this time I'll give a little bit of

1 background.

2 Staff filed its staff assessment on
3 December 28, 2001. And a supplement to the staff
4 assessment on January 18, 2002.

5 An evidentiary hearing is tentatively
6 scheduled for February 13, 2002. It is my
7 understanding that the final determination of
8 compliance has been received from the Air District
9 and that there are no other agency reports
10 outstanding.

11 However, it is also my understanding
12 that staff has recently received a number of
13 comments from local citizens including the City of
14 Tracy, which are still under review. And that
15 staff and applicant have not yet reached agreement
16 on certain items such as the visual resources and
17 noise.

18 Because -- well, that's my
19 understanding. Maybe I'm off, but I'll give you
20 an opportunity to address that.

21 Because of the recent receipt of so much
22 public content and the lack or my understanding
23 there's a lack, but maybe I'm in error there, lack
24 of agreement on certain items the impact on our
25 schedule at this time is not clear.

1 Staff has indicated, however, in its
2 staff assessment and supplement, that it believes
3 it will be able to reach agreement on all items
4 with the applicant; and that it will also be able
5 to address all of the recent public comment.

6 So at this time the Committee is going
7 to ask for an update from the parties on the
8 status of the items on which staff and applicant
9 still have not reached agreement, and your
10 thoughts on how they will impact the schedule, if
11 at all.

12 And I'd also like you to update the
13 Committee regarding your recent review of the
14 public comment that has come in.

15 AUDIENCE SPEAKER: We can't hear. We
16 can hear only when you speak directly into the
17 microphone.

18 HEARING OFFICER TOMPKIN: All right,
19 I'll try to do a better job of doing that.

20 MS. WILLIS: Thank you. I'm Terry
21 Willis, Staff Counsel, and I represent the staff
22 of the Energy Commission. And we're an
23 independent party in this case. We don't work
24 with the Commissioners, they're the decision
25 making body. So we're separate, independent party

1 just as Mr. Sarvey, Mr. Hooper and the applicant
2 and the other intervenors that are intervening at
3 this time.

4 We did file our prehearing conference
5 statements on Friday. Also a staff assessment
6 supplement. The staff assessment supplement did
7 not address all of the issues that we had planned
8 on addressing.

9 In that supplement we addressed air
10 quality and public health, biological resources,
11 hazardous materials, socioeconomics, T-line safety
12 and nuisance, waste management, worker safety and
13 visual resources.

14 The topic areas that we did not file,
15 and have yet to file, are in the areas of water
16 and soils, and that's basically an errata with one
17 condition changed, or I guess it's added.

18 Land use, and that was substantively the
19 conditions will not be changed, but we wanted to
20 address the comments that were raised in a letter
21 we received from the City of Tracy on January
22 16th. It was just two days prior to when the
23 supplement was due, so we were unable to address
24 all their comments as quickly as we'd hoped to.

25 And the last topic that we haven't filed

1 is in the area of noise. And in that area we are
2 changing one of our conditions, and we're also
3 trying to, I think, make the analysis a little
4 more reader friendly, because noise is a very
5 technical area and we know that there's an awful
6 lot of public concern over the issue of noise in
7 this area. And we want to make sure that our
8 analysis fully explains how we came up with the
9 conclusions that staff came up with.

10 Those we are expecting to file on the
11 31st, or at least by the 31st of January.

12 HEARING OFFICER TOMPKIN: And do you
13 anticipate there will be any impact on the
14 schedule?

15 MS. WILLIS: We don't anticipate -- I
16 mean we're still, obviously with a whole group of
17 intervenors intervening in the last couple of days
18 it's hard, at this point, to say what their input
19 into the process would be.

20 I mean with the comments that we have
21 received we believe that we can address them
22 adequately sufficiently by the 31st, and that it
23 would not impact the date of February 13th, or a
24 date thereabouts.

25 As far as I know, and maybe the

1 applicant can address this, we do not have a
2 discrepancy in our visual resources. I believe
3 that it's been addressed.

4 MR. STEIN: This is Dave Stein for the
5 applicant. Yes, the area of visual resources, the
6 applicant and staff are in agreement at this
7 point. So I don't believe that's an area that's
8 any longer contested between either party.

9 MS. WILLIS: And what my understanding
10 is, at this point the only section that hasn't
11 been, that the applicant hasn't seen fully would
12 be the area of noise. And I don't think that the
13 condition, as it will be written, will be
14 something that they will be objecting to.

15 I cannot say for sure, because they
16 haven't seen it. But, that's our understanding.
17 So at this point we don't believe that we will
18 have any issues between staff and the applicant to
19 adjudicate.

20 Now, the comments that we received from
21 Mr. Sarvey, I think, does open up about four or
22 five areas that we probably would need to deal
23 with in a public hearing. And those would be air
24 quality and public health. And we would request
25 that those would be taken as a panel.

1 Hazardous materials and waste management
2 was brought up as an issue by the City of Tracy.
3 Visual, biological resources, noise,
4 socioeconomics, and the City of Tracy also brought
5 up the issue of water, and we're not really sure
6 what their issue is at this point.

7 Mr. Sarvey also listed alternatives as
8 an area he believes needs adjudication. And we
9 haven't heard any comments in that area, so we're
10 really unclear. And maybe tonight he can explain
11 what area in the topic of alternatives he believes
12 needs to be addressed.

13 And finally, land use, and that seems to
14 be a topic that the City of Tracy and Mr. Sarvey
15 both brought up.

16 HEARING OFFICER TOMPKIN: Now, if I
17 understand you correctly, you just listed those
18 areas that you feel might be subject to
19 adjudication, is that what you're saying?

20 MS. WILLIS: Based on the comments from
21 Mr. Sarvey, only, and the City of Tracy.

22 HEARING OFFICER TOMPKIN: All right,
23 thank you. Did you wish to make a comment, Mr.
24 Grattan?

25 MR. GRATTAN: If you'd like to hear from

1 the applicant.

2 HEARING OFFICER TOMPKIN: Yes.

3 MR. GRATTAN: Yes. First, we agree with
4 the presentation staff made tonight, which as you
5 heard from Mr. Stein, we don't have a visual
6 issue; and we are not anticipating a noise issue.

7 So, we filed our prehearing conference
8 statement on Friday and indicated that we had no
9 issues with staff. And that we would, depending
10 on the intervenor concerns, would make witnesses
11 available. And we reserve the right for rebuttal
12 testimony on some of these areas.

13 I also want to note for the record that
14 the applicant filed its testimony today. We filed
15 it a week earlier than your schedule. And we
16 filed it with the idea and intent that the
17 intervenors would have that testimony for a week
18 longer to review than was in the original
19 schedule. And we hope that that assists in
20 facilitating the hearing and staying on schedule.

21 PRESIDING MEMBER PERNELL: Thank you,
22 Mr. Grattan.

23 MR. GRATTAN: I want to add I brought a
24 few copies with me. I gave one to Mr. Sarvey; I
25 gave one to staff; and I think I gave one to Mr.

1 Noble. There are a few left, and we'd be pleased
2 to give them out.

3 HEARING OFFICER TOMPKIN: So, if I --

4 MR. GRATTAN: They have been docketed
5 and they will be available, you know, to all
6 intervenors through the dockets. We just thought
7 we'd facilitate the issue and beat the mails on
8 this one.

9 HEARING OFFICER TOMPKIN: So if I
10 understand you correctly, as far as the staff and
11 the applicant are concerned, the February 13th
12 evidentiary hearing date is still a viable date?

13 MR. GRATTAN: It's more than viable to
14 us; it's a conservative date. But we'll deal with
15 the Commission's schedule here.

16 HEARING OFFICER TOMPKIN: There is also,
17 since the intervenors are also parties, I will
18 give an opportunity for comment on those
19 particular issues if any intervenor has a comment
20 at this time?

21 MR. SARVEY: Yes, Mr. Commissioner, --

22 HEARING OFFICER TOMPKIN: Mr. Sarvey,
23 you're going to have to speak up.

24 MR. SARVEY: Mr. Commissioner, I believe
25 at this time that no topics are ready to proceed.

1 Because of the entry of many new intervenors and
2 public interest, which has ground-swelled, I don't
3 believe anything is ready to go forward without
4 the public participation and the concerns of the
5 intervenors being addressed.

6 And they need time to prepare. And I've
7 submitted a motion dated January 21, 2002, and I
8 hope you've had a chance to look at it.

9 But at this time I really have to revise
10 my assessment of the situation. I had no idea
11 that this many intervenors would be involved, or
12 that the public would be so interested. And the
13 majority of people that are on my expert testimony
14 list have become intervenors, so it has more than
15 disrupted my witness list.

16 And I'm sure that you've probably
17 already seen my January 21, 2002 schedule
18 revision. And I'm ready to proceed topic by
19 topic. But at this time I don't think that any
20 topics are ready to proceed.

21 Thank you.

22 PRESIDING MEMBER PERNELL: Mr. Sarvey,
23 what are your topics of interest? You've seen the
24 list, and what we're trying to do here is to
25 figure out what the intervenors in this case

1 interests are. Whether they're going to have
2 expert witnesses. Will those witnesses be
3 prepared for cross-examination from staff or the
4 applicant, so that we can set a schedule.

5 So my question to you and all of the
6 intervenors is what are the topics on which you
7 have some concern, and whether you're going to
8 have expert witnesses, so we can determine how
9 long it will take in the evidentiary hearings.

10 HEARING OFFICER TOMPKIN: Before you
11 answer that, Mr. Sarvey, I'll indicate to you that
12 on the table there is a list of topics; there are
13 several of them that are addressed by the staff
14 assessment in this proceeding. And that's what
15 we're going to look at in terms of determining
16 issues.

17 MR. SARVEY: Well, as I said before, I
18 don't believe any topics are ready to go forward
19 because of the new intervenors that need time to
20 prepare their areas of their concern.

21 My concerns are air quality, biological
22 resources, facility design, land use is an
23 enormous issue, noise, power plant efficiency,
24 socioeconomics, transmission system engineering;
25 visual resources is another large area. And

1 worker safety and fire protection.

2 PRESIDING MEMBER PERNELL: And will
3 you --

4 MR. GRATTAN: Mr. Commissioner, can I
5 respond to that?

6 PRESIDING MEMBER PERNELL: Yes. Just
7 one further question, and that is you see the
8 schedule and the list, and so my question is
9 whether you have sponsors or witnesses or expert
10 witnesses.

11 MR. SARVEY: As I said before, Mr.
12 Commissioner, my witness list has been gutted
13 because everyone who was a witness on my list is
14 now an intervenor. And I will prepare written
15 testimony; and I'm scrambling at this time to come
16 up with some more expert witnesses. I have a
17 couple federal air people that would like to weigh
18 in on this. And I'm hoping that I can bring them
19 to the table.

20 PRESIDING MEMBER PERNELL: Okay, thank
21 you.

22 HEARING OFFICER TOMPKIN: Mr. Grattan.

23 MR. GRATTAN: Yes. Mr. Sarvey filed, as
24 he was directed by the order, as we were, a
25 prehearing conference statement. I would suggest

1 that the issues that appear in his prehearing
2 conference statement as issues for adjudication,
3 that those are the topics. That we all have to
4 abide by what we file here. We can't make things
5 up as we go along.

6 HEARING OFFICER TOMPKIN: Well, it might
7 be helpful at this point to just explain a little
8 bit about what we're looking for from the parties
9 at this time.

10 What I'm asking the parties to do,
11 including intervenors, is to address each topic
12 that's on this list, and identify whether that
13 topic is contested. And any other issue they
14 might wish to adjudicate by presenting witnesses
15 or cross-examining witnesses.

16 In addition, each party should indicate
17 whether you believe one day of evidentiary
18 hearings will be sufficient to cover all listed
19 topics.

20 If a party intends to cross-examine
21 witnesses on any given topic you must indicate
22 your intent to do so today, so that the witness
23 can attend the hearing.

24 If a party contests the testimony of
25 another party, you have to indicate the basis of

1 your objection; identify your witnesses; and the
2 estimated time necessary for you to present
3 evidence and/or cross-examine on the issue.

4 Now, this is a rather informal process
5 we're going through today, but I do need all of
6 that information in order to make a hearing order.

7 I understand, Mr. Sarvey, just dealing
8 with your issues right now that there are a number
9 of areas. You feel that nothing is ready to
10 proceed. But you're going to have to go forward
11 and state a specific basis why we need to take
12 testimony on that; the witnesses you intend to
13 call or not; or what you intend to cross-examine
14 on; and how much time that's going to take, in
15 order for us to formulate a plan of action in this
16 proceeding.

17 And that's necessary from each and every
18 party.

19 We'll go off the record for a moment.

20 (Off the record.)

21 HEARING OFFICER TOMPKIN: Back on the
22 record. I see a hand over here. I believe, are
23 you Mr. Tusso's counsel?

24 MR. SELIGMAN: Yes.

25 HEARING OFFICER TOMPKIN: All right, and

1 could you state your name for the record again?

2 MR. SELIGMAN: My name's Howard

3 Seligman; I'm the attorney for Mr. Tusso and his
4 family who own the property immediately adjacent
5 to the project site.

6 As you know, Mr. Tusso just intervened
7 yesterday, so my comments are going to be rather
8 brief and new, since we are just coming into this
9 particular issue.

10 Our concerns are principally related to
11 item number 7, land use. And interrelated to
12 that, item number 12, socioeconomics.

13 The basis for our concern and the basis
14 for our conclusion that the application is not
15 complete is principally based on the letter that
16 came from the City of Tracy.

17 This particular property, as well as the
18 project site, is within the sphere of influence of
19 the City of Tracy's general plan, calling
20 principally for residential development. We do
21 not believe that has been analyzed within the
22 documents that have been filed. And we believe it
23 needs to be analyzed in order for the Commission
24 to have a complete picture.

25 In terms of witnesses I am not prepared

1 to state who those would be, but I certainly would
2 include representatives or staff from the Tracy
3 City Planning Department; possibly members of the
4 Tracy City Council's Tracy Planning Commission. I
5 do not know if there would be any expert witnesses
6 or not.

7 In discussing the land use issue I would
8 assume that this would take a considerable period
9 of time, conceivably up to at least one-half day
10 on this particular issue, alone.

11 The socioeconomic factor is tied into
12 the land use issue, principally as it relates to
13 the impact economically to Mr. Tusso and his
14 family, as to whether or not the present general
15 plan of Tracy would be negatively impacted by this
16 particular project. And the extent to which they
17 would have an economic reversal because of the
18 inability to implement that sphere of influence as
19 called for in the plan.

20 PRESIDING MEMBER PERNELL: Thank you.

21 HEARING OFFICER TOMPKIN: So you
22 anticipate calling several witnesses. And are you
23 anticipating cross-examining, as well?

24 MR. SELIGMAN: To the extent that there
25 is any witnesses from the applicant on the land

1 use issue as it relates to the Tracy's general
2 plan, yes.

3 HEARING OFFICER TOMPKIN: Ms. Aguirre.

4 MS. AGUIRRE: Thank you. My name is Ena
5 Aguirre. I think that one of the problems that I
6 am having, and I think they may not be, you know,
7 from a lot of other people is that this is the
8 first time that any of us have been official
9 intervenors.

10 So I know that I have a lot of catching
11 up to do about the process and procedure. But so
12 you kind of have to put up with our kind of
13 slowness, you know, moving into this area.

14 I know that one of my biggest concerns
15 has to do with air quality and mitigation. Now,
16 air quality is simply because the amount of
17 pollution that they're putting out in our
18 neighborhood, it's going to stay with us for the
19 rest of my life, and everybody else's life.

20 But the mitigation that they're
21 proposing, and that goes to the fact that, you
22 know, that they seem to be spending \$6.5 million
23 some kind of pollution credits, you know. So
24 trying to get all of this information together and
25 try to put, you know, trying to put the witnesses

1 and all of that together, is something new.

2 I mean I put in my application last
3 Friday. I have a pay record that it was sent,
4 because I don't have a fax in my house. So I went
5 to a company and had that faxed. So it was there
6 since a week ago Friday.

7 But I didn't hear anything, so I mean I
8 assumed that for some reason somebody had said
9 that I was not qualified to be an intervenor, you
10 know. So, I mean you can see where, you know, I
11 may be coming from because I didn't hear anything
12 from anybody.

13 So I am still, you know, not quite sure
14 as to the processes and all of that that we're
15 supposed to be following.

16 Thank you.

17 PRESIDING MEMBER PERNELL: But air
18 quality is your issue?

19 MS. AGUIRRE: That's one of my issues.
20 And mitigation is the other one. And the last one
21 that I talked about has to do with the community
22 benefits. But that's not an issue that you have
23 anywhere that I can find.

24 And community benefits --

25 PRESIDING MEMBER PERNELL: It could fall

1 under socioeconomics.

2 MS. AGUIRRE: Yeah, it could.

3 PRESIDING MEMBER PERNELL: Okay, so we
4 have it. And let me just say that you are an
5 intervenor, and, you know, I don't have any excuse
6 as to why we didn't get it, but as you can see,
7 the Commission is pretty busy and things happen.

8 But you are an intervenor so I don't
9 think that you've lost any time of your intervenor
10 status.

11 MS. AGUIRRE: Okay, thank you.

12 PRESIDING MEMBER PERNELL: Thank you.

13 HEARING OFFICER TOMPKIN: Well, this is
14 a scheduling hearing nonetheless, and, you know,
15 this has been going on for awhile and I do
16 remember you from the informational hearing.

17 What I need from you at this time is an
18 indication whether you're going to submit
19 testimony on these issues. We'll start with these
20 issues that you're concerned about, air quality
21 and socioeconomics, whether you'll have an expert,
22 how much time you anticipate it will require --

23 MS. AGUIRRE: No, I don't have any
24 experts. But I will try to see if I can get some
25 witnesses.

1 HEARING OFFICER TOMPKIN: Well, the
2 problem is this. We are trying to go forward and
3 I can't -- this has been going on. I can't extend
4 and extend the schedule for people to come up to
5 speed when they're late and taking advantage of
6 the public opportunities. What I --

7 MS. AGUIRRE: I take exception to that.
8 I was not late --

9 HEARING OFFICER TOMPKIN: Ma'am, ma'am.

10 MS. AGUIRRE: No, no, --

11 HEARING OFFICER TOMPKIN: So what I'm
12 asking you to do is to take a moment and identify
13 the witnesses that you anticipate calling, and
14 whether you're going to need to cross-examine
15 witnesses, and who you'll need to cross-examine,
16 and the anticipated amount of time that you will
17 need.

18 PRESIDING MEMBER PERNELL: Let me just
19 state that --

20 MS. AGUIRRE: Commissioner, the --

21 PRESIDING MEMBER PERNELL: -- you don't
22 have to have a witness, you can simply make a
23 statement, if that helps.

24 MS. AGUIRRE: Well, yeah. Right.

25 PRESIDING MEMBER PERNELL: So if there's

1 a problem finding witnesses, and this is for
2 everyone's benefit, including the public, you
3 don't necessarily have to have a witness or go
4 through a formal process as those who are
5 represented by legal counsel.

6 Your concerns will be heard if you
7 simply make a statement as an intervenor. So I
8 don't want to put a lot of pressure on anyone that
9 this process is so stressful that you have to
10 worry about it.

11 If you have a concern and you're an
12 intervenor, and don't have any witnesses, that's
13 fine. You can still make a statement. That will
14 be on the record, and your concerns will be
15 addressed.

16 So, I don't want to put pressure on you
17 to go out and hire somebody or look for witnesses.
18 But you're an intervenor; intervenors have certain
19 rights. And you're not obligated to have
20 witnesses, but you can write a statement. Doesn't
21 have to be typed. And the Committee will
22 entertain that.

23 MS. AGUIRRE: Okay, thank you.

24 PRESIDING MEMBER PERNELL: So I just
25 want to make that statement for everyone, for

1 those in the community.

2 MS. AGUIRRE: Thank you. Again, I take
3 exception to being told by anybody that I was
4 late. I sent the forms, and I still have those
5 forms with the paid, you know, stub and
6 everything, that my papers went in there on time.
7 I was given this information that if I got them in
8 by the 18th they would be on time. I was not
9 late.

10 HEARING OFFICER TOMPKIN: Well, the --

11 MS. AGUIRRE: Internally there was a
12 problem that you all have, and that you all have
13 to settle, you know, what's the process that
14 you're, you know, following. But certainly don't
15 blame me and say that I was late because I was not
16 late.

17 Thank you.

18 HEARING OFFICER TOMPKIN: Thank you, Ms.
19 Aguirre. Mr. Noble -- I mean Hooper, excuse me.

20 MR. HOOPER: My name is Jim Hooper. My
21 particular issues are with air quality and public
22 health. And I can imagine needing quite a bit of
23 time after the parents of students in Tracy
24 Unified School District getting information about
25 this application. And the concerns that they

1 might wish to voice. I can imagine that might
2 take quite a bit of time. There must be 10,000
3 sets of parents.

4 HEARING OFFICER TOMPKIN: Yes, and I'm
5 sure you're not asking us to wait for you to
6 interview all those parents. What I need from you
7 and what I was attempting to explain to Ms.
8 Aguirre, is that this process has been going on
9 for a --

10 MR. HOOPER: Yes.

11 HEARING OFFICER TOMPKIN: -- number of
12 months.

13 MR. HOOPER: I got that.

14 HEARING OFFICER TOMPKIN: And so what I
15 need from you is in order to keep it going forward
16 you're intervening now, but the time has passed.
17 I need you to identify now a definite number or
18 identity of a person who is going to be a witness
19 if you're going to have a witness.

20 The Commissioner's absolutely right, as
21 an intervenor you don't have to call a witness.
22 But if you wish to call a witness or if you wish
23 to cross-examine a witness, you need to identify
24 that individual at this time so that the other
25 parties can have an opportunity to prepare to

1 question that witness, cross-examine, just know
2 who that witness is and determine a course of
3 action with respect to that witness.

4 And that applies to all the parties in
5 this proceeding. So, you need to identify
6 someone, if you're going to call a witness, or you
7 can simply indicate that you will be making a
8 statement or the extent of your proposed
9 testimony.

10 MR. HOOPER: I got it. Okay, let me
11 pass this along and think on those things.

12 HEARING OFFICER TOMPKIN: All right.

13 PRESIDING MEMBER PERNELL: Yes, just
14 come up to the podium and take the mike if you're
15 an intervenor and have been designated as such.

16 MR. NOBLE: Yes, good evening, again,
17 Mr. Commissioner, --

18 PRESIDING MEMBER PERNELL: Good evening.

19 MR. NOBLE: -- and Ms. Tompkin. My name
20 again is Dennis Noble. I'm an attorney in Tracy
21 representing the family Traina and Cocomes.

22 And we would add, as Howard has said,
23 our concerns are -- not necessarily just Howard's
24 and mine, but my concern for my clients are land
25 use and socioeconomic, because that has the

1 impact on the use of their land, which is
2 important to us.

3 And we do not think that the
4 Commissioners have seen all the evidence necessary
5 to make land use judgments from the applicant.

6 We would anticipate calling perhaps a
7 number of witnesses, including city officials,
8 county officials, and other local and statewide
9 agency members to make testimony relative to the
10 land use.

11 Cross-examination would also be somewhat
12 elaborate insofar as the applicant's land use
13 expert and his testimony.

14 However, you must know, and I'm sure
15 you'll understand this, it's not an accumulative
16 thing. You only have to do it once relative to we
17 have the same witnesses, you know, it wouldn't
18 perhaps take all that time.

19 But clearly it's a full half-day just on
20 the land use issues. I don't think you could do
21 that any less -- certainly in any less time if we
22 have put on four or five witnesses each. And
23 cross-examine your applicant.

24 But I think there is some time
25 constraints here and some time for us to deal with

1 it, but that's my statement relative to timing.

2 Thank you.

3 PRESIDING MEMBER PERNELL: Thank you.

4 You can just leave it up at the podium when you're
5 done, please.

6 MR. CARPENTER: Hi, I'm George
7 Carpenter. I'm an attorney representing Valley
8 Land Company. The three issues that we have
9 identified are noise, visual resources and land
10 use.

11 At this point we have identified our
12 noise expert will be Richard Rodkin of
13 Illingsworth and Rodkin. We anticipate for direct
14 evidence sponsoring the testimony approximately
15 one hour. We will make that witness available for
16 cross-examination and would like to reserve the
17 right to cross-examine other experts on that
18 matter.

19 With respect to visual resources and
20 land use, we have not formulated whether we will
21 provide our own experts, or whether we just would
22 like to reserve the right to cross-examine other
23 experts. But at a minimum we would like to
24 reserve the right to cross-examine other experts
25 and potentially put on our own direct evidence.

1 PRESIDING MEMBER PERNELL: Thank you.

2 MR. DEAN: Good evening, Commissioner
3 Pernell and staff.

4 PRESIDING MEMBER PERNELL: Good evening.

5 MR. DEAN: My name is Bill Dean; I'm
6 here on behalf of the City of Tracy. I work in
7 Planning Division. And as you know, as I stated
8 earlier this evening, I submitted an application
9 for intervenor status.

10 What I'd like to clarify right now is
11 that our City Council has not had the opportunity
12 to discuss this formally to identify all the
13 issues that they would like to address with staff
14 and the applicant and the Commission.

15 To date, addressed in a letter dated the
16 15th we have identified land use as a major issue
17 of concern that merits more discussion and
18 considerable discussion with the applicant and
19 staff.

20 In terms of the time required to address
21 this issue we really need to talk with City
22 Council. City Council needs to provide direction
23 to staff and come out with a clear voice for the
24 City in terms of all of the issues that they plan
25 on identifying in raising its concerns, be it

1 socioeconomic, visual resources, noise, land use.

2 Like I mentioned earlier, land use is
3 the issue right now. In terms of who will
4 testify, we have not determined that yet as we
5 just filed for intervenor status today, and we
6 anticipate having the discussion on February 5th
7 to clarify these.

8 So if you would allow us to have our
9 proceeding on the 5th to identify the issues that
10 we have a major concern, we would appreciate that.

11 PRESIDING MEMBER PERNELL: And you're
12 indicating that the City Council doesn't meet
13 until the 5th?

14 MR. DEAN: That is correct. We have a
15 scheduled hearing for the 5th to discuss this
16 issue.

17 PRESIDING MEMBER PERNELL: Is there any
18 chance that you can move that up?

19 MR. DEAN: No, sir.

20 PRESIDING MEMBER PERNELL: Okay, thanks.

21 MR. WEED: My name is Michael Weed. I'm
22 here representing the Cheng Family. The Chengs
23 own property immediately adjacent to the proposed
24 project.

25 And we're very similarly situated to

1 Mr. Seligman and his client. Our major concerns
2 are land use and socioeconomics. We are also late
3 intervenors.

4 I had a question about notice procedures
5 but I'd like to check with staff, because to my
6 knowledge my client did not receive the notices
7 that were described earlier. So I apologize for
8 the late appearance in the process, but I was just
9 recently advised of this hearing.

10 Our big issues would definitely be land
11 use and socioeconomics. Because of the proximity
12 of the project to my clients' property we would
13 also anticipate visual resources to be important
14 to us, and also noise.

15 I would agree with the assessments that
16 I've heard earlier that at least a half a day, it
17 seems to me, would be a minimum, given the number
18 of parties that are concerned about the land use
19 issue. And we would reserve the right to cross-
20 examination of the witnesses and questioning the
21 testimony of the applicant, although as I
22 mentioned I have to admit I haven't reviewed that
23 testimony yet, so I can't specifically say what
24 aspects.

25 And also although I would consider it

1 unlikely we would do more than make a direct
2 statement, it's possible we would have a witness
3 of a similar nature previously described, planning
4 officials from the County and City.

5 Thank you.

6 PRESIDING MEMBER PERNELL: Thank you.

7 Do we have any other intervenors who would like to
8 come forward?

9 MR. HOOPER: Hi, there. Once again, I'm
10 Jim Hooper. I'd like to add to my topics of
11 concern the transmission system engineering
12 portion of this project.

13 PRESIDING MEMBER PERNELL: I think we --
14 yeah, I got that one.

15 MR. HOOPER: Okay.

16 PRESIDING MEMBER PERNELL: Thank you.

17 Let me, before we do that, are there any other
18 intervenors, and I know we've covered a lot of the
19 same topics, but are there any other intervenors
20 who would like to come up to the podium?

21 HEARING OFFICER TOMPKIN: Ma'am, you're
22 raising your hand, but you haven't identified
23 yourself. Who are you?

24 MS. SARVEY: I'm Susan Sarvey. I'm here
25 on behalf of intervenor Irene Sundberg. She's not

1 able to be here this evening. This addresses her
2 issues, and she asked me to read it for you so
3 you'd know what she plans on discussing.

4 Commissioners and staff, my comments
5 stem mostly from issues of land use. I believe
6 the document is flawed, inadequate and very
7 misleading. The proposed TPP could have very well
8 have significant negative impacts on the City of
9 Tracy and the current landowners surrounding the
10 property in question. I encourage staff to
11 reevaluate the impacts to both the City and the
12 landowners due to the lack of information.

13 The City of Tracy adopted their urban
14 management plan, a general plan document, on July
15 19, 1993. Within that document it clearly lays
16 out seven community areas. In GWF land use
17 section it makes no mention of these areas. South
18 Shulte and Tracy Hills are within these areas.
19 This project falls within the City of Tracy's
20 sphere of influence, yet there is no mention of
21 this."

22 "Both these areas have been identified
23 as residential. Please see exhibit 11 community
24 areas map." I have the map with me. "These areas
25 are clearly within the boundaries of the adopted

1 specific plan and the City of Tracy's sphere of
2 influence. The South Shulte community area was
3 never committed to power plants. Power plants are
4 listed as conditionally permitted use within AG
5 zoning. This does not mean the project will be
6 appropriate within the South Shulte community
7 planned residential area."

8 "Whereas this project may be a good
9 neighbor and appropriate for agricultural zoning,
10 it is most certainly not appropriate for
11 residential housing as it states. This most
12 definitely poses a conflict for the area. There
13 has not been an analysis that addresses these
14 inadequacies of the document and one should be
15 completed."

16 "There were only two schools mentioned
17 in the area that could possibly be impacted by
18 being in a sensitive receptor zone. There was no
19 mention of any schools located within Tracy
20 Unified School District. Among those not
21 mentioned are Freller, Hirsh, Villalovoz,
22 Williams, West High and possibly others. Our
23 children already live in an area that has been
24 designated by the EPA as severe. And we, as
25 residents of San Joaquin Valley need to be

1 proactive in our efforts to promote clean air and
2 protect our children and grandchildren."

3 "Locating the TTP on the San Joaquin
4 Valley floor is a poor choice, not only for land
5 use, but for air quality, visual impacts and
6 noise. The existing landowners and the general
7 populace of Tracy want to know what are the
8 financial advantages to having GWF as a neighbor.
9 The City coffers will not be expanded by the
10 County receiving the tax revenues from GWF. Nor
11 have we been offered a reduction in power costs."

12 "Property owners need to worry about
13 their property being devalued because of the added
14 risk from GWF placing a peaker plant at the edge
15 of our City limits. TPP will not supply a large
16 number of jobs, nor will it add to the beauty of
17 our skyline, or keep our residents safe from
18 acquiring asthma. This is just not an appropriate
19 area to place a power plant."

20 "Commissioners and staff, please hear
21 the residents and listen carefully to their very
22 valuable information they wish to share, as this
23 is their community and no one knows its advantages
24 and disadvantages better than we do. Thank you.
25 Irene Sundberg, Intervenor."

1 PRESIDING MEMBER PERNELL: Thank you.

2 (Applause.)

3 PRESIDING MEMBER PERNELL: We will enter
4 this into the record as an intervenor statement.
5 Did the applicant get a copy of this?

6 MR. GRATTAN: No.

7 HEARING OFFICER TOMPKIN: Mr. Sarvey.

8 MR. SARVEY: Mr. Commissioner, I
9 recognize the importance of the schedule. I
10 recognize the business goals of GWF is an
11 important part of this process.

12 But as you can see, the difficulty for
13 intervenors who have filed in the last week to
14 prepare and give a competent statement as to who
15 they will call as witnesses, what time that will
16 take, who they want to cross-examine when they
17 have not seen any of the information, I think is
18 an unreasonable request. Although, of myself, I
19 think that is a very reasonable request, as I've
20 been involved in this process for two months.

21 And I'd like to present you with my
22 revised Committee schedule in the hopes that you
23 would, in your wisdom, see that this was a
24 schedule that would be adopted in order to
25 accommodate the people who have just come onto

1 this application for certification. And I would
2 like your permission to present it to you.

3 PRESIDING MEMBER PERNELL: Okay.

4 HEARING OFFICER TOMPKIN: We'll accept
5 it, but it's also necessary for you to make that
6 available to the other parties, as well.

7 MR. SARVEY: It's been docketed.

8 HEARING OFFICER TOMPKIN: It has been
9 docketed?

10 MR. SARVEY: Yes, ma'am.

11 HEARING OFFICER TOMPKIN: All right,
12 thank you.

13 PRESIDING MEMBER PERNELL: Just to be
14 sure, I have the schedule, but you're handing me a
15 packet, you want the entire packet or just the
16 schedule?

17 MR. SARVEY: That is the docketed packet
18 that I presented, so I didn't want to give an
19 incomplete --

20 PRESIDING MEMBER PERNELL: Right, and we
21 have it. That hasn't changed from the one that
22 we -- we already have this revised schedule, your
23 schedule.

24 MR. SARVEY: You've got one already?

25 PRESIDING MEMBER PERNELL: Yes.

1 MR. SARVEY: Okay.

2 PRESIDING MEMBER PERNELL: Okay, if
3 there's no other intervenors -- yes, sir.

4 MR. SELIGMAN: A suggestion. My name is
5 Howard Seligman, representing the Tusso family.
6 I'm just making a suggestion, when you're
7 considering the scheduling process, that as
8 opposed to just establishing a starting date, as
9 has been tentatively indicated by staff, you might
10 want to consider from a practicality standpoint, a
11 series of dates covering these specific items that
12 are on your list, recognizing that some are going
13 to be more controversial than others.

14 If you would schedule those
15 appropriately so that people that are not involved
16 in some issues but are involved in others, the
17 time spent in the hearing process could perhaps be
18 more effectively used.

19 PRESIDING MEMBER PERNELL: Thank you.

20 HEARING OFFICER TOMPKIN: Well, we will
21 issue an order, hearing order, after this. And
22 the purpose of that order is going to be set forth
23 in the manner in which the evidence will be taken
24 at hearing.

25 And certainly, we will consider land use

1 and the necessity for a block of time to be
2 allocated to that so that the parties who are
3 participating will know when their presence is
4 required.

5 We went directly to the intervenors
6 without really giving staff an opportunity to
7 comment specifically with respect to the schedule,
8 and applicant, as well. And I wanted to know if
9 they had any additional comments they wanted to
10 make.

11 MS. WILLIS: Thank you. Once again, I'm
12 Kerry Willis, I represent the Energy Commission
13 Staff in these proceedings.

14 I guess just at this point, hearing the
15 number of participants, we are a little concerned
16 that without further, I guess in writing, what the
17 issues are for each of these participants, we know
18 that they're concerned about land use, but we're
19 not exactly sure what each party's issues are in
20 the areas.

21 And in order for us to prepare our
22 witnesses and even in the areas of land use and
23 noise we haven't issued the supplement yet. We
24 could possibly address some of those issues if we
25 were clear on what issues they're bringing up.

1 So I guess that would be my comment at
2 this point. When I marked how many areas were
3 contested and by whom, there's obviously more
4 areas contested at this point than we had
5 anticipated.

6 HEARING OFFICER TOMPKIN: And it appears
7 that they're all contested according to Intervenor
8 Mr. Sarvey, so it makes it difficult. But I hear
9 your comment.

10 Mr. Grattan.

11 MR. GRATTAN: If the applicant can make
12 a couple comments here. One is we have to look at
13 the Commission's order. And the Commission's
14 order required the filing of a prehearing
15 conference statement. The Commission's order also
16 notes, citing the Commission regulations, that
17 intervention is generally not permitted within 30
18 days of scheduling evidentiary hearing.

19 We don't wish to cut off public debate,
20 and that's why we do not object to any of these
21 interventions. But what we have to do if we're
22 going to stay on schedule is we're going to have
23 to -- my suggestion, excuse me, my suggestion is
24 that in the next couple of days that the
25 intervenors file a late, if you will, prehearing

1 conference, or we hammer it out tonight.

2 Another suggestion that I might have is
3 that with respect, Mr. Sarvey said he's got a
4 problem that all of his witnesses are now
5 intervenors. Well, number one, we don't object to
6 that. That's not a problem.

7 And number two, what might work for
8 everybody is if the intervenors thought about
9 pooling resources here and since the issues seem
10 to be, particularly with land use, the same, if
11 they would jointly sponsor witnesses.

12 So, anyway, that's my comment and my
13 suggestion.

14 PRESIDING MEMBER PERNELL: You know, we
15 also have some public comment, and we're going to
16 get to you. But if there's no other intervenors,
17 what I'd like to do is take a ten-minute recess;
18 come back and hear the public comments for the
19 record. And then there will be some final
20 comments by me.

21 So, at this time, I'd like to take a
22 ten-minute break. We come back at, let's come
23 back at ten to seven. We'll reconvene at ten to
24 seven. We'll then take public comment.

25 Thank you.

1 (Brief recess.)

2 PRESIDING MEMBER PERNELL: We're back on
3 the record.

4 HEARING OFFICER TOMPKIN: All right,
5 before we proceed to public comment I just wanted
6 to make one clarification for the record.

7 It's my understanding from the comments
8 by both applicant and staff, that in order to
9 facilitate understanding what the specific issues
10 are that the intervenors have, that they would be
11 willing to allow a couple of extra days for the
12 intervenors to submit their specific issues in
13 writing. And by so doing the intervenors will be
14 limited to what's contained in these prehearing
15 conference statements, is that a correct
16 understanding?

17 MR. GRATTAN: Yes.

18 MS. WILLIS: Yes, that would be fine
19 with us.

20 HEARING OFFICER TOMPKIN: All right.

21 PRESIDING MEMBER PERNELL: We have the
22 City of Tracy?

23 MR. DEAN: Yes. Thank you again for the
24 opportunity to say a few words. Just in response
25 to the idea that a few more days would be needed

1 or possibly granted, we'd appreciate that.

2 However, I'd like to reiterate that the
3 City Council is meeting on February 5th, and we
4 have public notice requirements. And for me to
5 move that date I'm afraid I'd have to talk with
6 the city manager and our directors to see if
7 that's even possible from a legal standpoint in
8 terms of the statutory requirements for public
9 notice for the hearings.

10 But that hearing is scheduled for the
11 5th to be discussed, so I'd appreciate at least 24
12 hours from the 5th to prepare a list of items that
13 come forth from the community.

14 Thank you.

15 PRESIDING MEMBER PERNELL: I understand
16 certainly about notice of public meetings, having
17 been a former elected official, myself.

18 However, we also have a proceeding. And
19 I don't think that the City -- it's just my
20 opinion, but I don't think that the City Council
21 has to have a meeting to address the Council's
22 concerns.

23 Now, is the Council waiting to hear from
24 the general public before they do their
25 statements, or -- I'm not understanding why we

1 have to wait until the 5th to have a Council
2 meeting to address some of the Council's concerns.

3 It appears to me that you're an
4 intervenor and you have that status, certainly the
5 City of Tracy has thought about what their issues
6 are.

7 MR. DEAN: That's correct, the City has
8 thought about the issues, but an issue of this
9 magnitude on the doorstep of the community, I
10 think would certainly merit the input of the
11 community into any formal discussion that the
12 Council would want to entertain before staff and
13 the applicant and the Commission.

14 That's my personal thought. However, I
15 will entertain the idea. I will bring it up with
16 my director and the city manager to see if some
17 other arrangements could be made prior to the 5th.
18 I will inquire as to that, but it's my thought
19 that this is a community issue.

20 Thank you.

21 PRESIDING MEMBER PERNELL: Okay, I would
22 just ask --

23 (Applause.)

24 PRESIDING MEMBER PERNELL: -- I would
25 just ask that on the record that the City of Tracy

1 be somewhat flexible. We are trying to do that
2 for the community, and I understand about the
3 notice and those issues. So I do appreciate your
4 comment.

5 But we're all, including the community,
6 trying to be flexible on this issue.

7 HEARING OFFICER TOMPKIN: Off the record
8 a moment.

9 (Off the record.)

10 PRESIDING MEMBER PERNELL: Okay, I'm
11 just being advised by my legal counsel, what we'd
12 like to do is give the intervenors until 5:00 on
13 the 30th to have your comments in writing to the
14 Commission. And those who don't have the address
15 can get that from the Public Adviser.

16 Thank you. Can everybody hear me?

17 What I will grant in terms of
18 flexibility is the intervenors will have until
19 5:00 on the 30th to get their comments in to staff
20 and to the applicant, so that they can be prepared
21 to have their expert witnesses when we do the
22 evidentiary hearing.

23 So, that is some additional time. Is
24 that satisfactory to staff?

25 MS. WILLIS: Commissioner, my concern is

1 that testimony was originally due on January 31st
2 for all parties. I'm confused if these comments
3 are in addition to the testimony that would be
4 normally filed on the 31st?

5 At this point we haven't really seen a
6 witness list from others, as well. So when would
7 we be able to see that?

8 HEARING OFFICER TOMPKIN: By comment
9 we're talking about the prehearing conference
10 statement that should have already been filed.
11 And what we need from the intervenors is to
12 specifically identify what your issues are.

13 Land use is a very broad topic. I mean
14 there has to be some narrower definition of land
15 use, or visual. I mean what specifically are you
16 concerned with. What are you going to want to
17 question on. What are you going to present
18 evidence on.

19 You have to be very specific. We're
20 giving you additional time, given that many of you
21 have just intervened, to sit down and marshal your
22 resources, as it were.

23 And so that's what the purpose of
24 extending the deadline to the 30th is, it's
25 essentially giving you the opportunity to late

1 file your prehearing conference statement.

2 Now, the schedule also indicates that
3 you're supposed to have your testimony, a summary
4 of your testimony from your proposed witnesses
5 filed by January 31st, which is the next day. At
6 this point we're not extending that. It seems to
7 me, in our discussions, that if you can identify
8 your witnesses, you're going to have to know what
9 their testimony is going to be. So that is due
10 the next day, the testimony has to be filed and
11 served by January 31st.

12 If you like, you can file it on the 30th
13 at the same time. It's up to you. But it is due
14 by the 31st. So those are two separate documents
15 that are required.

16 Is that acceptable to the applicant and
17 staff?

18 MR. GRATTAN: Yes, it is.

19 MS. WILLIS: Thank you for that
20 clarification.

21 HEARING OFFICER TOMPKIN: Yes.

22 PRESIDING MEMBER PERNELL: Okay, we're
23 now on the public comment, and we have a number of
24 cards. We'll call you up, and if for some reason
25 we can't understand the pronunciation of your

1 name, I'm apologizing ahead of time.

2 HEARING OFFICER TOMPKIN: And we want to
3 remind each person that's going to comment to step
4 up to the mike, speak loudly and clearly, and
5 please identify yourself. Many of you, I'm having
6 a hard time reading your writing, so you might
7 also want to spell your name, your last name.

8 The first card is from Rick Sheney?

9 MR. SHEWEY: Shewey. My name is Rick
10 Shewey; I'm a concerned resident and citizen of
11 Tracy.

12 PRESIDING MEMBER PERNELL: Rick, would
13 you spell your last name for the record, please?

14 MR. SHEWEY: Spelled S-h-e-w-e-y.
15 Actually today is the first I've ever heard of
16 this plant coming to Tracy or to the Tracy area.
17 It seems to me that having seen that the City has
18 just come aware of this, also, as an intervenor,
19 that the majority of the residents of Tracy
20 haven't been notified of this. And there should
21 be some time allowed for the residents of Tracy to
22 address City Council, and City Council to act
23 accordingly with the residents' wishes.

24 And that's all I have to say on the
25 matter right now.

1 PRESIDING MEMBER PERNELL: Thank you.

2 (Applause.)

3 HEARING OFFICER TOMPKIN: Edward Rogers.

4 MR. ROGERS: Yes, my name is Edward
5 Rogers and I'm representing my family. I live in
6 the Redbridge Community, which is located about a
7 mile away from the proposed site.

8 I'd like to understand why there is a
9 full-sized power plant in the Bay Area that is
10 being put on postponement because of the power
11 requirements being less now because of consumer
12 use. It's being delayed because of that.

13 I'm wondering why we're pushing through
14 a peaker plant in this expedited fashion because
15 of that.

16 PRESIDING MEMBER PERNELL: My
17 understanding of that situation is it's the
18 applicant's decision to delay. However, if you're
19 talking about the --

20 MR. ROGERS: The Calpine plant.

21 PRESIDING MEMBER PERNELL: -- the
22 Calpine, they are continuing to go through with
23 our process. So that the licensing portion of
24 that is continuing to move forward. Calpine has
25 decided not to build once they get their license,

1 and I can't give you a reason as to why they're
2 not doing it, but it's the applicant's choice.
3 And if the applicant wants to pull out, then they
4 can. But if they're in our process we have an
5 obligation to go through with the process. And
6 it's in statute in the Warren Alquist Act, so we
7 don't have the flexibility just to say we're not
8 going to process your application, when they went
9 through all the various procedures.

10 MR. ROGERS: Also I'd like to leave you
11 with one thing, as well. If this plant was being
12 proposed one mile away from where you and your
13 family live, would you guys be in acceptance of
14 this, as well?

15 You can understand why some of these
16 people are very concerned about that.

17 HEARING OFFICER TOMPKIN: Thank you, Mr.
18 Rogers.

19 (Applause.)

20 HEARING OFFICER TOMPKIN: Kay Pappas.

21 MS. PAPPAS: My name is Kay Pappas, and
22 I'm representing my family. I live in Redbridge,
23 again about a mile away from the proposed site.

24 And my concern is about the pollution
25 and the environmental hazards that are going to be

1 part of this plant.

2 I moved to Tracy thinking that -- and to
3 Redbridge thinking that this was -- that I wasn't
4 going to have a power plant a mile away from me.
5 So my main concern is about the pollution. And
6 also the property values of my house was something
7 quite so large, quite so close.

8 PRESIDING MEMBER PERNELL: Thank you.

9 (Applause.)

10 HEARING OFFICER TOMPKIN: Monica Lowney.

11 MS. LOWNEY: My name is Monica Lowney.

12 The spelling on that is L-o-w-n-e-y. Monica
13 Lowney. And I have several concerns, actually, so
14 I think I'll just take them one at a time and you
15 can answer my questions and we'll go from there.

16 But one of my biggest concerns is lack
17 of public notification. I found out about this
18 approximately two weeks ago. The paper of choice
19 in this area is The Tracy Press --

20 PRESIDING MEMBER PERNELL: Excuse me,
21 can I ask you, how did you find out?

22 MS. LOWNEY: Through word-of-mouth; a
23 friend who lives in Redbridge.

24 PRESIDING MEMBER PERNELL: Thank you.

25 MS. LOWNEY: And one of my questions is

1 what papers were used for advertising these
2 meetings, which I understand there were, correct
3 me if I'm wrong, two in November and then one in
4 January. This will be the second meeting in
5 January, is that correct? And do you know what
6 newspapers these meetings were publicized in?

7 HEARING OFFICER TOMPKIN: Grace.

8 PRESIDING MEMBER PERNELL: Yes, I would
9 ask the Public Adviser. The question is what
10 papers was the notice of these meetings published
11 in, and basically if you can explain what you did
12 to get the word out to the community.

13 MS. BOS: As I stated in the beginning
14 of the meeting, when the applicant, in August,
15 gave us the application for certification we sent
16 the application for certification, the big books,
17 to two libraries. I know one was Tracy; I'm
18 trying to remember the name of the other library.
19 Okay, I know it went to the Tracy Library. Plus a
20 poster, a big poster. And we asked that they put
21 that up and the poster.

22 We put in the next month or about six
23 weeks later we put 8000 flyers in The Tracy Press.
24 They were inserts in The Tracy Press. And I see
25 people shaking their heads. If they call me I can

1 show you the receipts of it, 8000 flyers. That
2 was their minimum.

3 (Parties speaking simultaneously.)

4 PRESIDING MEMBER PERNELL: Okay, please.

5 MS. BOS: I'm sorry, I was just asked to
6 explain what we did. There's like a minimum that
7 papers allow, and that was the minimum that we
8 could do, so it had to be 8000. So we did that.

9 We also, and I don't have the list in
10 front of me, contacted the schools. Some schools
11 said, no, you cannot do flyers. There was a
12 school that let us do a letter in their school
13 newsletter. So that was done. Because some
14 schools will not allow -- if you would call me, I
15 would give you.

16 I mean we have so many communities, so
17 many that I cannot, you know, out of my head think
18 of all the schools.

19 AUDIENCE SPEAKER: Can you tell us when?

20 MS. BOS: Oh, yes, that was done right
21 in the very beginning, so that would have been in
22 September.

23 AUDIENCE SPEAKER: And that was a one-
24 time shot?

25 MS. BOS: Yes.

1 PRESIDING MEMBER PERNELL: Okay, we
2 can't -- I just need you to explain what was done,
3 and then we want to give the mike back to the
4 witness.

5 MS. BOS: Thank you.

6 MS. LOWNEY: Thank you, Grace. So what
7 we found out is we had 8000 flyers inserted into a
8 local paper of approximately 60,000 residents. We
9 had a school of some sort notified in September,
10 which was a one-time notification when we've had
11 three meetings, this is our fourth meeting.

12 And I never did get the answer on what
13 newspaper that those possible advertisements were
14 put in for these meetings, however. I read The
15 Tracy Press front to back daily and never had seen
16 one.

17 And as far as any of the flyers, if
18 anyone in this room received one, could you please
19 raise your hand? Okay, so we had two individuals
20 out of everyone in this room received flyers.

21 So my point being is I feel that the
22 lack of public notification was simply not fair.
23 Obviously the meeting that we had two weeks ago
24 was half of the size of the meeting we're having
25 tonight. And I believe that is because of the

1 notification that has recently circulated through
2 the City.

3 Therefore, I'd like to ask on the record
4 for an extension of time, whether it be your
5 January 31st deadline for the testimony on the
6 intervenors, or simply giving our City Council the
7 opportunity to have a public forum or meeting
8 regarding how this is going to affect our
9 community so we could respond to those issues.

10 (Applause.)

11 MS. LOWNY: So, needless to say, and
12 I'll end my issue here, I am a citizen, and I
13 believe I speak for others, do not feel like I
14 have had the proper opportunity to do the research
15 that I would like to do to make my points of
16 interest that I would like to make on the negative
17 impact that this will bring to our community.

18 So, I would most definitely like to ask
19 for more time. And I know this is on a fast-track
20 process, which leads to my next question. Are
21 peaker plants the only plants, in comparison to
22 power plants, that are allowed to go through the
23 fast-track process? Typically it should take 12
24 months, and this is taking approximately four to
25 five, from what I understand.

1 PRESIDING MEMBER PERNELL: Well, peaker
2 plants are not the only plants that can go through
3 the fast-track process. We had a process of 21
4 days last year when we were having rolling
5 blackouts.

6 So the issue is for health and safety
7 reasons is that we want to prevent rolling
8 blackouts. And when that happens we have people,
9 and I know a number of residents are concerned
10 about asthma and people on respirators, et cetera.
11 If that electricity goes down, then we have a
12 health and safety problem in this state.

13 And the answer to your question is no,
14 peaker projects are not. But some of those
15 emergency orders do not exist today. So we don't
16 have a 21-day process anymore.

17 And let me just say for the record,
18 because it appears that a lot of the residents
19 didn't get notification for whatever reason, but I
20 will assure you that the next time we have a
21 hearing that people will get notification. And we
22 have an office that is responsible for that. And
23 I can't tell you what happened because I don't
24 know, and I don't know that anything happened.
25 But I can tell you that I will research that, as a

1 Commissioner presiding over this case, to insure
2 that you will get notice.

3 I would also ask everyone in this room
4 to sign, I'm sure we've got a sign-up list, to
5 sign up and you will get notification of the
6 hearing, personally mailed to your address, if the
7 address is legible.

8 But the point is that I understand, as a
9 Commissioner, that this is a possible problem.
10 And I want to deal with it from this point on. I
11 can't tell you what happened in the past, but I
12 will let you know that we are sure that especially
13 the people in this room, if you sign up on the
14 list, will get notification.

15 MS. LOWNEY: Thank you very much, we do
16 appreciate that.

17 (Applause.)

18 MS. LOWNEY: And I would just like to
19 state for the record that The Tracy Press is the
20 paper of choice for Tracy citizens. I mentioned
21 that to Cheri last Monday. So in the future if
22 you could please consider putting some type of
23 advertisement in that paper. They even have a
24 section for meetings that are going on in our
25 community during the week, and that would be a

1 good place to put it.

2 So, back to the peaker plant permitting
3 issue. I'll rephrase my question. What is the
4 typical amount of time that it should take for a
5 peaker plant process, permitting process, to take
6 place? Is it 12 months?

7 PRESIDING MEMBER PERNELL: Again, we
8 have permitted peaker projects in 21 days.

9 MS. LOWNEY: But what is your typical --

10 PRESIDING MEMBER PERNELL: The typical
11 time for a power plant like the one that was
12 mentioned in the Calpine plant is a 12-month
13 process.

14 The Commission has a 12-month process
15 and a six-month process. We had an emergency 21-
16 day process and an emergency four-month process.
17 And that emergency statute got rescinded.

18 So this particular project, and I know
19 people are saying that we're rushing this, and you
20 know, I think it's a misconception. But everybody
21 has their own opinion. But, again, and as I've
22 said, we want this to be an inclusive process for
23 the community. We're not trying to ram it down
24 your throat. If you didn't get notice, and if
25 you're in this room, you will get notice.

1 So this is not anything we're trying to
2 run and duck and hide on, and we want to address
3 the issues of the community. But we also have a
4 process that is statute, set up by law. So we are
5 governed by laws, as well.

6 MS. LOWNY: And we understand that.
7 And with all due respect, I don't believe anyone
8 here is accusing you of pushing anything through
9 the process. But that is how we, as a community,
10 do feel. And unfortunately for this particular
11 peaker plant, although hopefully with Calpine and
12 Tesla and the other plants planned for the area,
13 we will receive proper notification. But from
14 what I'm hearing tonight it's too late for that
15 regarding this plant; that unless you become an
16 intervenor tonight's the last opportunity for open
17 public comment.

18 PRESIDING MEMBER PERNELL: No, that's
19 not correct. This is the beginning of the hearing
20 process. We're going to have an evidentiary
21 hearing. Every hearing that we have I'm going to
22 request that it's in Tracy.

23 MS. LOWNY: Great.

24 PRESIDING MEMBER PERNELL: I don't know
25 what else I can do on this issue. I can't respond

1 now to what happened in the past. All I can tell
2 you is when we get ready -- with the exception of
3 the final Commission hearing, the other hearings,
4 the evidentiary hearings, any additional workshops
5 or whatever, will be in this community, because
6 this community is concerned.

7 And that's all I can tell you right now.

8 MS. LOWNY: Okay, thank you. Can you
9 just give me an approximate date when the CEC's
10 deadline is on making their decision? I
11 understand GWF wants to break ground in March and
12 have their plant up and running by October. So
13 that does not leave too much time.

14 When do you plan to make your decision
15 on whether or not they will be receiving their
16 permit?

17 PRESIDING MEMBER PERNELL: Well, we have
18 a tentative date, but it's tentative. We've got
19 additional testimony. And so the Committee will
20 go back and take that into consideration and put
21 out a schedule to go forward from here.

22 So, at this point I can't give you a
23 date.

24 MS. LOWNY: Could you share your
25 tentative date with the community?

1 PRESIDING MEMBER PERNELL: It's on the
2 schedule, and I think it's the --

3 HEARING OFFICER TOMPKIN: It's set forth
4 in the notice of hearing for this particular
5 proceeding.

6 It's April 3rd.

7 PRESIDING MEMBER PERNELL: April 3rd is
8 the tentative date.

9 MS. LOWNY: Okay, thank you.

10 PRESIDING MEMBER PERNELL: But again,
11 this is not the last time you will have, this
12 community will have an opportunity to comment on
13 this project.

14 MS. LOWNY: Great, we appreciate that.

15 HEARING OFFICER TOMPKIN: Can I make one
16 additional comment?

17 MS. LOWNY: Yes.

18 HEARING OFFICER TOMPKIN: The
19 evidentiary hearing is an opportunity for parties
20 to put evidence into the record. But it's also an
21 opportunity for any member of the public, time
22 permitting, to make public comments. And that
23 comment will be included as a part of the record,
24 if not as direct evidence, to supplement or
25 possibly explain evidence that is put into the

1 record by the parties.

2 So, if you are interested in making a
3 comment at the evidentiary hearing, you are not
4 precluded from doing so.

5 MS. LONEY: Thank you. My next
6 question is based on air quality issues and
7 environmental standards --

8 PRESIDING MEMBER PERNELL: Okay, this is
9 a prehearing conference. When we start getting
10 into the specific issues, that's going to be on
11 the evidentiary hearing portion.

12 Because we have a lot of people who want
13 to speak --

14 MS. LONEY: Okay.

15 PRESIDING MEMBER PERNELL: -- I don't
16 want to get into the substantive issues.

17 MS. LONEY: I don't want to do that. I
18 just wanted to see if the CEC has made any
19 decision regarding my question two weeks ago,
20 which was can a cumulative report be done on the
21 various pollution issues that our community
22 already has here. For example, the biomass plant
23 that I understand GWF has partial ownership in;
24 the Owens-Brockway Glass plant.

25 Other aspects, for example, EPA just

1 raised air quality standards in our County to
2 severe within the last few weeks. Were those
3 issues taken into consideration? And can we put
4 any cumulative report together that can be used as
5 a ground-level example to compare the effects on
6 the community with this plant and any other future
7 power plant that would like to build in our area?

8 PRESIDING MEMBER PERNELL: Staff, do you
9 want to take that one?

10 (Laughter.)

11 MS. DAVIS: In staff's analysis we look
12 at the ambient conditions and that is considered
13 as part of our base analysis.

14 And then we do what's called a
15 cumulative impacts analysis in which we look at
16 projects that are reasonably foreseeable in the
17 future.

18 So anything that's already there is
19 included in the base analysis. Everything that's
20 already in place is included in our analysis.
21 Everything that is reasonably foreseeable is
22 included in the cumulative impacts part of our
23 analysis.

24 MS. LOWNEY: But what about comparing
25 all of the current pollution that is in our

1 community today as a groundfloor issue, and then
2 adding the cumulative aspects of whatever is
3 foreseeable in the future on top of that? Is
4 there any base report, for example? It seems as
5 if the GWF plant was looked at as a singular issue
6 on the parts per million and how many people could
7 be affected by the cancer-causing agents that will
8 be emitted.

9 However, the other plants that are
10 emitting things into our air was not taken into
11 account, in addition to our water here in Tracy,
12 which I believe is contaminated from site 300 in
13 our tire fire.

14 So we know there are many different ways
15 that a human can be affected on a toxicology
16 standpoint. It can be skin absorption, it could
17 be what they're drinking, it could be what they're
18 breathing.

19 So I would just like to request that a
20 report of that magnitude be done to take into
21 account all of the effects that Tracy residents
22 are currently subjected to.

23 (Applause.)

24 MS. DAVIS: I'm not exactly sure how to
25 respond because I don't know what you're asking

1 for that's different than what we've done.

2 Because I think that what we've done already

3 addresses your comments.

4 MS. LOWNY: Have you done studies on
5 the water quality in our City and how often the
6 biomass plant emits toxins, and how many times
7 they've been cited in the last year for doing so?

8 PRESIDING MEMBER PERNELL: I think the
9 answer to your question, your original question,
10 was yes. What staff does in its analysis is
11 existing facilities in the area, and the impact.
12 And those that are -- the legal term?

13 MS. DAVIS: Reasonably foreseeable.

14 PRESIDING MEMBER PERNELL: -- reasonably
15 foreseeable in the future. And so those are the
16 cumulative impacts analysis that staff does.

17 And if you want to read those it is on
18 the website.

19 MS. LOWNY: Okay. And I've seen your
20 website.

21 PRESIDING MEMBER PERNELL: Okay, so how
22 many more questions do you have?

23 MS. LOWNY: Okay, I will cut it short.
24 I don't want to waste any more time on this issue,
25 we can deal with that later on an intervenor

1 issue.

2 My next question is enforcement. I
3 think most of the residents who live here, and a
4 lot of residents who live in Redbridge, are aware
5 that the biomass plant, at times, has brown and
6 black smoke coming out of it, and you can smell
7 chemicals in the air.

8 However, my question is, the peaker
9 plant, how often will it be inspected; what type
10 of enforcement will be initiated to make sure that
11 it is fully in compliance at all times?

12 HEARING OFFICER TOMPKIN: That's a fair
13 question, but I'm going to defer the answer to
14 that, and advise you to read the staff assessment.
15 Those issues are dealt with in the staff
16 assessment.

17 There are a number of other individuals
18 here who wish to make comments. We're accepting
19 comments, but we're not prepared at a scheduling
20 hearing to go into all the details of the staff
21 assessment. That document has been issued. It's
22 a public record. It is available for review.

23 MS. LOWNY: Okay.

24 HEARING OFFICER TOMPKIN: So I'm going
25 to ask you to --

1 MS. LOWNEY: Thank you. Can I just
2 bring up one last point, and then I promise I will
3 leave.

4 HEARING OFFICER TOMPKIN: This will be
5 your last question.

6 MS. LOWNEY: Okay. Offsets. When this
7 plant, if this plant is built I understand that
8 they have to purchase so many offsets, which would
9 clean the air up at other facilities within our
10 valley, however Tracy falls under the guidelines
11 of San Joaquin Valley, not San Joaquin County,
12 which means those offsets could be purchased as
13 far as Bakersfield.

14 And my understanding is GWF has chose to
15 purchase their offsets in Bakersfield. So my
16 question and concern would be can we possibly see
17 if they could purchase offsets in our County to
18 improve our air quality, opposed to the air
19 quality in an area that will not affect our
20 community?

21 And I just want to thank you again for
22 giving me the opportunity. And I would just like
23 to state that I don't believe our community should
24 have to shoulder all of the negative impacts of
25 several energy plants and peaker plants.

1 Thank you.

2 PRESIDING MEMBER PERNELL: Thank you.

3 HEARING OFFICER TOMPKIN: Thank you.

4 (Applause.)

5 HEARING OFFICER TOMPKIN: JoAnne and Tim
6 Lund? Well, apparently they're not here. I will
7 read their comment:

8 "We are homeowners one mile from the
9 proposed site. And we are concerned
10 with the pollution and the location of
11 the plant. We vote against the plant.
12 Please keep this out of our homes.
13 Thank you."
14 Kevin Stewart.

15 MR. STEWART: My name is Kevin Stewart.
16 I've lived here for 16 years now, raised my family
17 here. My kids don't go to school anymore; they've
18 moved out of the house.

19 I found out today by watching a
20 Sacramento news station. So the notification, I'm
21 not against building a plant; I've always
22 supported that there has to be -- everyone has to
23 help with the power situation.

24 But I find it very irritating that I
25 found out today by watching an out-of-city news

1 station. Now, I don't care whose responsibility
2 it is; it wasn't done.

3 And in my mind it seems like the people
4 proposing it need to make sure that proper
5 notification of the people that live in the city
6 are notified.

7 And it's frustrating that the meetings
8 that were held previous to this, I never got a
9 chance to speak to them, because I never knew
10 about it.

11 So there was a lack of notification, and
12 I'm sure there's a whole bunch of people in this
13 town that are going to be upset about it. I
14 called ten today, but they were all at work,
15 except for me, because I stay home. That's all I
16 found out.

17 Thanks.

18 (Applause.)

19 PRESIDING MEMBER PERNELL: Well, thank
20 you. And, again, you know, I'm hearing this over
21 and over, and I have to apologize. But it is the
22 Commission's responsibility to notice the
23 community. And it sounds like we didn't do as
24 good a job as we could have.

25 But, again, I will assure you that you

1 will get notice. And this is a theme I'm hearing
2 over and over, and you won't have to hear it on
3 the news coming out of Sacramento or anywhere
4 else. If your name is on the list you will get
5 notice.

6 AUDIENCE SPEAKER: But it's the rest of
7 the people.

8 (Parties speaking simultaneously.)

9 PRESIDING MEMBER PERNELL: Well, we
10 will, again I will go back and insure that our
11 notification works. If the community says it
12 should be in the Tracy paper, then that's where it
13 should be, in my opinion. I will go back and
14 check on that.

15 HEARING OFFICER TOMPKIN: I just want to
16 state that even though some residents didn't get
17 notice, I can assure you that this notice of the
18 hearings have been published in the paper. I
19 believe it was The Tracy Press, but we will verify
20 that. And if not, since that does seem to be the
21 newspaper of choice, the next notice will be in
22 that particular newspaper.

23 The next person is Anika O'Brien.

24 MS. O'BRIEN: Hi, my name is Anika
25 O'Brien. I live in the Redbridge community. I do

1 not want this power plant, peaker plant built in
2 our neighborhood. Myself and my children suffer
3 from asthma. And I feel that it will just
4 continue to compound our health problems as the
5 years go on.

6 Thank you.

7 HEARING OFFICER TOMPKIN: Thank you.

8 (Applause.)

9 HEARING OFFICER TOMPKIN: Paula
10 Buenavista.

11 MS. BUENAVISTA: Hi, good evening; Paula
12 Buenavista. Thank you for giving me the
13 opportunity to speak. I am a homeowner in Tracy.
14 I live in the community of Redbridge.

15 And I'd just like to touch on two
16 topics, or make statements tonight on the air
17 quality and property value.

18 My first comment is that I will be
19 living 1.5 miles approximately from the plant
20 location. And as Monica Lowney stated, the air
21 quality has been deemed severe here in the area
22 that we do live.

23 And I have discussed mitigation credits
24 with GWF in the efforts to understand them more.

25 And it was brought to my attention that GWF

1 doesn't necessarily have a choice as to where the
2 mitigation credits are purchased. So I just
3 wanted to clarify this evening just one
4 clarification question.

5 Do you actually have a choice as to
6 where you can mitigate and buy those credits, as a
7 company? Because my understanding in my
8 discussion with Mark Kehoe was that it was what
9 was available for you to purchase.

10 MR. WHEELER: Doug Wheeler, GWF. We
11 went to the emission reduction credit bank, that
12 is the inventories maintained by the San Joaquin
13 Valley Air Pollution Control District.

14 And we identified ERCs and we acquired
15 ERCs from those banked credits. A number of those
16 ERCs were either created by GWF or purchased by
17 GWF in the San Joaquin County area.

18 Some of them were acquired in Kern
19 County. There were ERCs that were acquired from
20 Fresno County, Modesto County.

21 Does that answer the question?

22 MS. BUENAVISTA: Yes, it does, it
23 answers the question. And then also we discussed
24 modeling as far as air quality goes. And my
25 concern as a homeowner and as a resident of Tracy

1 is how accurate or how credible is modeling in
2 regards to the fact that it's really hard to test
3 what the air quality could be like should we have
4 the GWF peaker plant and five other plants
5 surrounding our community in Tracy.

6 It would be difficult to model, I guess,
7 the cumulative effects of those. So my concern is
8 modeling and how it's done, and how accurate or
9 credible it is.

10 My second comment, in regards to
11 property value. I received a property value
12 assessment from GWF, and the company that did the
13 assessment is RLW Analytics. Roger Wright has a
14 Ph.D., and he's the president, who, I believe, did
15 the assessment.

16 And in reading through that it's a very
17 thorough, very extensive assessment. And the
18 property values were based on the existence of the
19 Owens-Brockway plant and the biomass power plant
20 based on a three-mile radius.

21 And as a concerned citizen I just felt
22 that the assessment was inadequate due to the fact
23 that the assessment has no data on the effects of
24 a peaker plant and/or the other four proposed
25 plants that could be within the community; and how

1 that will affect the price of my home in the
2 future should I decide and/or choose to move on
3 out of this community.

4 And my goal is to stay and be a Tracy
5 resident, and have clean air to breathe,
6 hopefully, in the future. And thank you very much
7 for your time and -- thank you.

8 PRESIDING MEMBER PERNELL: Just one
9 question. You mentioned four other plants being
10 built in Tracy?

11 MS. BUENAVISTA: The proposed plants in
12 the surrounding area.

13 PRESIDING MEMBER PERNELL: Okay, --

14 MS. BUENAVISTA: That's the map that I
15 have in my possession.

16 PRESIDING MEMBER PERNELL: Just for
17 clarification, we license plants that are 50
18 megawatts or above. If they are under 50
19 megawatts then you need to talk to your City
20 Council, or whomever has the designation for those
21 types of plants.

22 And I'm not aware of four plants that
23 are 50 megawatts or above that are proposed for
24 Tracy, at least not coming through the Energy
25 Commission.

1 MS. BUENAVISTA: Okay. There's a map
2 that specifies the surrounding area. It may not
3 be specifically in the sphere of Tracy, but it
4 will be surrounding where we live.

5 Thank you.

6 PRESIDING MEMBER PERNELL: Okay.

7 HEARING OFFICER TOMPKIN: Thank you.

8 Emmett Lee.

9 (Applause.)

10 MR. GRATTAN: We will wait until the
11 end. There's some questions that maybe we could
12 answer, but let's let the --

13 MR. LEE: I'm a 40-year resident of
14 Tracy. And I have an issue with the health, or a
15 health concern. Maybe my question has already
16 been answered, but I specifically wanted to know
17 something about the amount of carcinogens that may
18 be released into the air. And did I hear you
19 correctly that the staff has already made that
20 assessment? And it is available on the internet?

21 MS. TOWNSEND-SMITH: There's also copies
22 of --

23 PRESIDING MEMBER PERNELL: State your
24 name for the record, please.

25 MS. TOWNSEND-SMITH: Ellie Townsend-

1 Smith. And there's also copies of the staff
2 assessment in the back. I think there's still
3 some more copies. It's the huge document back
4 there.

5 For information on carcinogens you
6 should look in the public health section of the
7 document. And Grace is going to give you a copy.
8 But it addresses that, and uses the criteria one
9 in a million possibility of cancer in an area.

10 But it should all be in the staff
11 assessment.

12 MR. LEE: Thank you. The reason for my
13 concern is that my youngest daughter contacted
14 Hodgkins disease when we were living within the
15 city limits of Tracy. And at that time there
16 were, it's a fairly rare disease among young
17 girls, and there was four young girls within a
18 block in the Tracy area that contacted that
19 disease.

20 And the San Joaquin County Health
21 Department was supposed to look into that, and we
22 never heard anything about that.

23 We then moved to a house just out of
24 town and my wife, and also my dog, contacted
25 breast cancer. And we had some questions about

1 the area that we were living in there.

2 So we've moved from there and now we
3 find ourselves one-half a mile downwind from a
4 power plant that may go into effect.

5 So this is the reason for our concern.
6 So hopefully we'll find answers in this document.
7 Thank you.

8 PRESIDING MEMBER PERNELL: Thank you.

9 HEARING OFFICER TOMPKIN: Thank you.

10 (Applause.)

11 HEARING OFFICER TOMPKIN: Brian Pekari.

12 MR. PEKARI: My name's Brian Pekari, and
13 I work in the field of asthma and allergy. And
14 that's where my concern comes.

15 Being a resident of Tracy, and not only
16 Tracy, San Joaquin County. And actually it had
17 been mentioned previously they were talking about,
18 the question came up about the future plants.

19 And it's through the California Energy
20 Commission, that's where it was listed. There's
21 five additional plants that they're looking to
22 place here in the geographical area of Tracy,
23 Tracy-Lathrop.

24 The first -- actually two of them being
25 in Alameda County, but still on this side of

1 Altamont, which would affect Tracy as well as the
2 San Joaquin County.

3 But if you guys want to take a look at
4 it, we have it here. And it's from the California
5 Energy Commission. We can get you a copy if you
6 need --

7 PRESIDING MEMBER PERNELL: Right, a copy
8 of the map. And they are proposed, but let me
9 explain for a minute the way our process works.

10 An application comes in to the
11 Commission; it is reviewed and it is determined
12 data adequate. And what that means is they have
13 all of the information to allow staff to analyze
14 the project.

15 If it's not data adequate, then myself
16 or the Commission has no -- if an application is
17 not filed with the Commission, then we have no
18 reasons to process it or believe that it's going
19 to happen. There are intents that come to the
20 Commission, and perhaps that's what that is, the
21 intent to file. I can't answer that, perhaps
22 staff can.

23 But let me just tell you the market has
24 changed. And a lot of things that are proposed,
25 in my opinion, would never get built because it's

1 not cost effective anymore. Electricity is not as
2 high as it used to be, and this is a market-driven
3 industry.

4 So, I don't know if that gives you any
5 comfort level, but I can tell you that it costs a
6 lot to build one of these plants. And the
7 financing on some of these is not there anymore.
8 It's drying up.

9 So, I'm not -- I can't tell you whether
10 they'll be built or not. I'm just telling you
11 that the market has changed. We, I include
12 myself, but California has put certain things in
13 place to drive the cost of electricity down. And
14 so some of these plants won't get built.

15 And so we're concerned, as the Energy
16 Commission, that in '04 we'll be in the same
17 position we were in '01, which is shortages.
18 Because our analysis is showing that a lot of
19 these plants are not going to get built.

20 So, again, we look at things that are 50
21 megawatts or above.

22 Staff, are you familiar with the map
23 that he's talking about with the plants on it?

24 MR. PEKARI: Yeah, this map, actually
25 there are five that are above that 50. There's

1 one that's 49. That would make number six.

2 There's 1000, 1100, 500, 120 and 169; and then

3 that 49, which would make it six.

4 PRESIDING MEMBER PERNELL: Do you know
5 who's proposing those?

6 MR. PEKARI: Well, this was -- the
7 source is California Energy Commission Statewide
8 Transmission and Power Plant Maps for 2001.

9 PRESIDING MEMBER PERNELL: 2001.

10 MR. PEKARI: 2001. We can get --

11 PRESIDING MEMBER PERNELL: Could I see
12 that?

13 MR. PEKARI: -- you a copy, yes.

14 PRESIDING MEMBER PERNELL: Okay.

15 (Pause.)

16 HEARING OFFICER TOMPKIN: We'll go off
17 the record a moment.

18 (Off the record.)

19 MR. PEKARI: I guess where the concern
20 comes from that we've heard from a lot of people
21 in the house tonight, I just heard about this two
22 days ago. And as we hear that these may or may
23 not be built, that is a concern. Because we had
24 no idea that the peaker plant was going to be
25 built, and this was coming through.

1 My concern in the field of allergy and
2 asthma is this area of San Joaquin County, as well
3 as the whole valley of California, we have, for a
4 few years now there's been a project. It's called
5 the Fresno Project. And it has been federally
6 funded to find out why this area of California is
7 the third worst in the nation for asthma.

8 And just recently over this past year
9 San Joaquin County, itself, has been given
10 federally funded money to get this disease under
11 control.

12 So, any additional things into our air,
13 elements, whether it be the peaker plant or
14 whatever else, there's definitely a concern here.
15 And I think the federal government sees that, as
16 well.

17 And what I'd just like to propose is not
18 only, when you come down to the safety there's a
19 lot of issues. It's kids. I mean, if I had more
20 time I could gather as much information as you
21 need with regards to education, missed school
22 days, ER visits, whatever you want to see with
23 regards to asthma and allergy.

24 And this addition is definitely not
25 going to be a nice contribution to our community

1 when you talk about health. It's not only Tracy;
2 it could be San Joaquin County, as well, as we
3 know the winds blow.

4 That's all I have, thank you.

5 (Applause.)

6 HEARING OFFICER TOMPKIN: Thank you.

7 PRESIDING MEMBER PERNELL: Here's your
8 map back.

9 HEARING OFFICER TOMPKIN: Mr. Pekari.

10 PRESIDING MEMBER PERNELL: We're going
11 to need to see the entire report to see --

12 MR. PEKARI: Okay, we'll get it.

13 PRESIDING MEMBER PERNELL: Okay.

14 HEARING OFFICER TOMPKIN: Tom Celillo.

15 And could you spell your last name, please.

16 MR. CELILLO: Sure. I'm Tom Celillo, C-
17 e-l-i-l-l-o. I'm a resident of Tracy. I have a
18 number of concerns like the rest of us here in
19 this room.

20 Air quality seems to be one of the main
21 priorities. A lot of things people aren't looking
22 at are the transmission lines. Transmission lines
23 propose a large hazard, also. One, just kids
24 climbing the poles, climbing towers. Everything
25 else of that nature, along with the power lines.

1 Dangers of the gas line. Using of that
2 gas line will propose is that danger that close to
3 our area. I live in Redbridge, we're really
4 close, you know.

5 I'm from San Francisco originally. I
6 don't know if any of you have ever seen a gasline
7 explode under the street, but it's pretty major.
8 I mean they wipe out streets, cars. I mean that's
9 a lot bigger of a gasline than what they use in
10 the city to feed a house.

11 Monica's a real tough act to follow,
12 along with some of the other people that have come
13 up here and spoke.

14 The dangers need to be understood by the
15 people of Tracy. They need to be notified as far
16 as the public notification. I know you've been
17 beat to death on that. But, my understanding is
18 the out-of-city news agency was notified by the
19 public, wasn't notified by anybody that should
20 have.

21 They obviously came out for free. It
22 didn't cost them any money. So, why weren't they
23 notified is my question.

24 PRESIDING MEMBER PERNELL: Why weren't
25 the --

1 MR. CELILLO: Why wasn't the news media,
2 radios, television.

3 PRESIDING MEMBER PERNELL: Okay, again,
4 I can't answer that, but I can tell you that I
5 will look into notification.

6 We might have an answer for you on this.

7 MS. DAVIS: Our media office does send
8 out press releases when an application is
9 received, when it becomes data adequate, and when
10 our staff assessments go out.

11 As to why the press hasn't picked up on
12 the press releases, I couldn't speak to that.

13 MR. CELILLO: I understand the
14 scheduling issues you have. But being that the
15 public has had poor notification, I feel we, as
16 citizens of Tracy, need an extension on your
17 schedule in order to where we can fully understand
18 what's going on in our community. This is our
19 community that -- is impacting our community as
20 well as the rest of California. So we need to
21 understand what's going to happen and how it's
22 going to affect us.

23 Thank you.

24 (Applause.)

25 PRESIDING MEMBER PERNELL: Thank you.

1 HEARING OFFICER TOMPKIN: Thank you.

2 Susan Sarvey.

3 MS. SARVEY: Susan Sarvey. My first
4 question would be do you know what the price per
5 megawatt hour is that we're going to be paying
6 under the contract with the Water Resource Board
7 for this plant at this time? Is it at the market
8 rate that's going now, when we don't need as much
9 energy? Or are we paying the rate that's inflated
10 from when we had an energy shortage? What rate
11 are we paying for this power?

12 PRESIDING MEMBER PERNELL: The
13 Department of Water Resources negotiates with the
14 applicant, and we're not privileged to those
15 negotiations as a Commission.

16 What our concern is, is the licensing of
17 the project. And it's not a given that it will be
18 licensed. And that's why we're here taking
19 testimony and trying to get all of the community
20 concerns.

21 The issue of the price of electricity is
22 something that we don't analyze. And that's
23 strictly done with the Department of Water
24 Resources and the applicant.

25 MS. SARVEY: So we have no way of

1 knowing if we are paying the inflated rate from
2 this being contracted during the emergency
3 problems? That's what this came into discussion.
4 I want to know, is there room in the contract to
5 allow for the fact that we are no longer in
6 rolling blackouts. Are we going to pay the
7 current market rate for this power, or are we
8 paying the old market rate when there was
9 blackouts? Are we going to be polluted and
10 overcharged at the same time?

11 (Applause.)

12 PRESIDING MEMBER PERNELL: The answer in
13 terms of the rates, the rates are set by the PUC,
14 the Public Utilities Commission. And I'm not sure
15 what type of contract the applicant has, but the
16 rate that you will pay is set by the Public
17 Utilities Commission for those who are in IOU,
18 investor-owned utilities' territory, like PG&E,
19 San Diego Gas and Electric and Southern California
20 Edison. Those rates are set by the PUC.

21 So, regardless of what kind of --

22 MS. SARVEY: Well, let me --

23 PRESIDING MEMBER PERNELL: -- contract
24 that they have, the rates are set by a public
25 body, which is the PUC, Public Utilities

1 Commission.

2 MS. SARVEY: Okay. Let me explain where
3 my concern comes from. It's been made very clear
4 that the public did not get adequately notified.

5 PRESIDING MEMBER PERNELL: It's also
6 been made clear --

7 MS. SARVEY: Wait, wait, wait, and
8 you're going to --

9 PRESIDING MEMBER PERNELL: -- that they
10 will from now on.

11 MS. SARVEY: -- and you're going to --
12 you're going to try, I understand that.

13 PRESIDING MEMBER PERNELL: Okay, I'm
14 going to --

15 MS. SARVEY: GWF has said it wants to be
16 a good neighbor. I believe it wants to be a good
17 neighbor. If it's going to be a good neighbor,
18 what is the rush? The land is not running away.
19 The water is not going anywhere. The gas pipeline
20 isn't crawling off. Why can't we take the time to
21 have the City Council meeting; have the people's
22 questions addressed? What is our rush? Unless
23 there is some situation where this is going to
24 impact the amount of money that they are going to
25 make per kilowatt hour. That is my concern.

1 If that's what's going on I think, as a
2 resident of this community, I need to know that my
3 concerns are not being addressed so they can make
4 more money. That's not a good neighbor. A good
5 neighbor would answer my questions and give me
6 time.

7 PRESIDING MEMBER PERNELL: Well, again,
8 I don't --

9 (Applause.)

10 PRESIDING MEMBER PERNELL: The
11 schedule --

12 MS. SARVEY: Why can't we have more
13 time?

14 PRESIDING MEMBER PERNELL: The schedule
15 will be set by the Committee. So, the Committee,
16 which is comprised of myself and another
17 Commissioner, we will set the schedule.

18 MS. SARVEY: What is necessary to get
19 you to consider revising the schedule? Or is the
20 situation that there is no way to have this
21 schedule revised?

22 PRESIDING MEMBER PERNELL: Let me ask
23 you a question. How do you know I'm not going to
24 recommend --

25 MS. SARVEY: I don't know, --

1 PRESIDING MEMBER PERNELL: -- revising
2 the --

3 MS. SARVEY: -- that's what I'm asking.

4 PRESIDING MEMBER PERNELL: Okay. So no
5 one knows. The Committee has to meet, hear all
6 the evidence and we'll put out a schedule.

7 MS. SARVEY: I'm just -- I'm not trying
8 to be argumentative. I'm concerned because I keep
9 hearing everybody talking about the schedule, and
10 it seems like we have to stay on schedule, we got
11 to stay on schedule. It doesn't matter what comes
12 out here, we are going to stay on schedule.

13 PRESIDING MEMBER PERNELL: Okay. Have
14 you heard that from me? We're going to stay on
15 schedule?

16 MS. SARVEY: I'm telling you that's --
17 I'm telling you that's my impression.

18 PRESIDING MEMBER PERNELL: Okay, well,
19 that's --

20 MS. SARVEY: And that's only my
21 impression. I don't know what their impression
22 is. That's my impression.

23 PRESIDING MEMBER PERNELL: Okay, all
24 right. Your point's well taken and I will
25 certainly take it under consideration, but,

1 please, the rumor mills and everybody's impression
2 and all of this is going around. The people that
3 make the decision are the Committee.

4 MS. SARVEY: Okay.

5 PRESIDING MEMBER PERNELL: And I will
6 take that back, and I'm not going to get pressured
7 into making a decision tonight.

8 MS. SARVEY: No, I understand that. I'm
9 just asking realistically, is that door still open
10 for a revised schedule. Or is it closed? Because
11 it feels to me, sitting here, like that door is
12 pretty much closed.

13 PRESIDING MEMBER PERNELL: Okay, well, I
14 think you're --

15 MS. SARVEY: Is that wrong?

16 PRESIDING MEMBER PERNELL: -- mistaken.
17 I think you're mistaken.

18 MS. SARVEY: Thank you, I feel better.
19 I'm glad you corrected me.

20 PRESIDING MEMBER PERNELL: I'm glad you
21 do.

22 (Laughter.)

23 MS. SARVEY: Now, my next comment is on
24 community notification and the community hearings.
25 Tracy is a commuter community. And I've read in

1 the newspaper at points that as much as 83 percent
2 of this community commutes.

3 So I really appreciate your moving the
4 hearings to Tracy, but I don't think we should
5 ever have a hearing before 7:00 p.m. If you have
6 a hearing before 7:00 p.m., the 83 percent of the
7 population --

8 (Applause.)

9 MS. SARVEY: -- that commutes cannot
10 come here.

11 (Applause.)

12 PRESIDING MEMBER PERNELL: Boy, you guys
13 are really tough.

14 (Laughter.)

15 MS. SARVEY: Well, no, we're the people.
16 We're the people that supposedly everybody wants
17 to hear from, and alleviate our concerns. But we
18 have to be home to be able to come here and tell
19 you.

20 AUDIENCE SPEAKER: There'd be a lot more
21 people here if the commuters were here.

22 MS. SARVEY: Now, my last question --

23 (Parties speaking simultaneously.)

24 PRESIDING MEMBER PERNELL: Okay, please,
25 ma'am.

1 MS. SARVEY: Okay. My last -- this is
2 very personal for me, my children have very bad
3 asthma. I have asthma, myself, but I have one
4 child that is very bad.

5 I've been privileged to look at a lot of
6 your reports because my husband is an intervenor.
7 And one of the areas that really concerns me is
8 that a lot of this monitoring is based on things
9 that happen in Livermore. And I read a lot that
10 we're like Livermore. We are not Livermore.

11 Who do we talk to, where do I go for us
12 to get our own air quality monitoring station that
13 will monitor all the crap coming out of all these
14 plants for real for Tracy? Not somebody else's
15 air, but my air. How do I get the station put in
16 my town to measure my air? Then we don't have to
17 argue about what way the wind blows, because
18 everybody doesn't agree on what way the wind
19 blows.

20 And so if you put your air monitoring
21 station here, we will all know what our air is and
22 we can all discuss it in a professional manner
23 because we all know what it is.

24 PRESIDING MEMBER PERNELL: Okay, I'm
25 going to take a shot at this, and if I'm wrong

1 staff is going to correct me.

2 But I think that is the responsibility
3 of the Air District. And so --

4 MS. SARVEY: So I need to call the Air
5 District?

6 PRESIDING MEMBER PERNELL: Or your local
7 city representative who can probably call the Air
8 District. But, again, there are some things that
9 other agencies do, like set the rates, like --

10 MS. SARVEY: Right.

11 PRESIDING MEMBER PERNELL: -- the PUC,
12 and we have no control over those. But in terms
13 of the air monitoring, the Air District is the
14 agency that you want to refer your questions to.

15 MS. SARVEY: Okay. Now, if we do get an
16 air quality monitoring station do you have any
17 idea how long it would be before you could start
18 using that information in these plants that you
19 will be studying for our town?

20 Does anybody have any idea how long it
21 takes to get it up and running?

22 PRESIDING MEMBER PERNELL: I certainly
23 don't.

24 MS. SARVEY: Okay. Thank you very much.
25 And I really hope you'll make your hearing after

1 7:00. Thanks so much.

2 PRESIDING MEMBER PERNELL: Thank you.

3 I'll take that under advisement.

4 (Applause.)

5 HEARING OFFICER TOMPKIN: I believe it's
6 James Miner. Could you spell your last name,
7 please.

8 MR. MINER: My name is James Miner,
9 that's M-i-n-e-r. I'm a Tracy resident. I live
10 in Hidden Lake. I'm not a wealthy landowner, and
11 I can't afford a lawyer to speak for me. I don't
12 know how to read through all this technical
13 material you presented here. I don't have an
14 opinion yet one way or the other whether or not I
15 support this power plant.

16 We have to have power in the State of
17 California, I understand that. What I have a
18 problem with, sir, as an elected official --
19 you're not an elected official, are you?

20 PRESIDING MEMBER PERNELL: Former.

21 MR. MINER: You're an appointed
22 official?

23 PRESIDING MEMBER PERNELL: Yes.

24 MR. MINER: As an appointed official you
25 are not responsible to the people of this City.

1 The people that are responsible to the people of
2 this City have been excluded from this process.

3 You're not allowing them -- this is a
4 scheduling hearing for an evidentiary hearing, is
5 it not? The evidentiary hearing was requested by
6 the representative for the City to be extended so
7 that the City Council could meet with the people
8 of this City to discuss the issues and present
9 their position.

10 You denied them that right.

11 PRESIDING MEMBER PERNELL: Have I?

12 MR. MINER: Yes, you -- yes, you
13 specifically stated --

14 PRESIDING MEMBER PERNELL: The scheduled
15 hearing hasn't -- again, let me be clear.

16 MR. MINER: No, sir, you've had a lot of
17 opportunity to be clear. And on that issue you
18 have not been particularly clear.

19 PRESIDING MEMBER PERNELL: Okay, well,
20 you know what, --

21 MR. MINER: May I finish, please,
22 because I'm --

23 PRESIDING MEMBER PERNELL: Wait, wait --

24 MR. MINER: -- standing up here, I'm the
25 one that's getting to speak, am I not?

1 PRESIDING MEMBER PERNELL: I understand
2 that. Now, if you want to be argumentative, and
3 don't want to be on the record and don't want to
4 be heard, then continue to talk.

5 I'm the Presiding Member of the
6 Committee, all right. The Committee sets the
7 schedule. Okay? Now, I want to be clear on that,
8 because I'm being accused of not giving the City
9 of Tracy, and quite frankly, and I say this on the
10 record, it is hard for me to believe that the City
11 Council or any city council, so I won't name
12 anyone, any city council that is representing the
13 folks, and we have been here twice and staff has
14 had workshops, and they didn't know it was going
15 on. That is a little difficult for me to believe.
16 But I'll take your word for it.

17 So, I'm telling you, and you can stand
18 there and grandstand, but I'm telling you that the
19 Committee sets the schedule. We have not set the
20 schedule yet.

21 Please continue.

22 MR. MINER: You stated that the date to
23 submit material for the evidentiary hearing is the
24 31st, is it not?

25 PRESIDING MEMBER PERNELL: That's

1 correct.

2 MR. MINER: Okay, the City Council will
3 not meet until the 5th, therefore how can they
4 present evidence by the 31st if they're not
5 meeting until five days after that? Isn't that
6 excluding them, sir?

7 PRESIDING MEMBER PERNELL: No, it's not.

8 (Laughter.)

9 MR. MINER: How is it not excluding
10 them, sir?

11 PRESIDING MEMBER PERNELL: Because
12 that -- well, if you'll let me explain. At
13 evidentiary hearings the City will have a chance
14 to come to the mike and present evidence or their
15 concerns or their residents' concerns.

16 They're not excluded. We're not
17 excluding anyone. Nor have we ever excluded
18 anyone.

19 MR. MINER: So the gentleman from the
20 City specifically stated that the law requires
21 that they notify the public, so they cannot move
22 their hearing forward.

23 I guess what I don't understand here is
24 why, as a representative, you are supposed to look
25 out for the interests of the whole State of

1 California and our power needs. You're supposed
2 to look out for the welfare of the companies that
3 provide those, because if those companies go
4 insolvent like PG&E, then we have a big problem.

5 But you're also supposed to look out for
6 the well being of the citizens of the state,
7 aren't you? We are, by excluding our elected
8 bodies from meeting with us, they are the only
9 voice we have. We cannot all afford attorneys.

10 PRESIDING MEMBER PERNELL: I'm not
11 excluding them from meeting with you.

12 MR. MINER: But, sir, they can't meet
13 with us and find out what our concerns are, and
14 then present them at your hearing, because --

15 PRESIDING MEMBER PERNELL: Why?

16 MR. MINER: -- your hearing is five
17 days -- because their deadline is five days after
18 yours, sir. They cannot move their hearing up.
19 Our City Council cannot meet sooner.

20 PRESIDING MEMBER PERNELL: No, you're
21 misunderstanding.

22 MR. MINER: No, I don't think so.
23 Explain to me how I'm misunderstanding.

24 PRESIDING MEMBER PERNELL: I just did.

25 (Parties speaking simultaneously.)

1 PRESIDING MEMBER PERNELL: Okay, one
2 final point on this. The evidentiary hearing has
3 not been set. When the Committee sets the
4 schedule, the public, intervenors and the City,
5 and anyone else who wants to be on the record and
6 present their case can do so.

7 Now, tell me how that's excluding the
8 City Council.

9 MR. MINER: Well, let me ask you this.
10 Explain to me exactly --

11 PRESIDING MEMBER PERNELL: Well, I'm
12 not --

13 MR. MINER: My understanding was, sir,
14 that --

15 HEARING OFFICER TOMPKIN: We're not
16 entertaining --

17 PRESIDING MEMBER PERNELL: A debate.

18 HEARING OFFICER TOMPKIN: -- questions
19 or debates. At this time you can make a final
20 comment and then we'll move on to the next
21 speaker. A final comment.

22 MR. MINER: Actually, I think my
23 comments speak directly to what this hearing is
24 about. It's about scheduling a hearing, right?

25 HEARING OFFICER TOMPKIN: We heard your

1 comments, sir. We appreciate your participation
2 here tonight. We'll --

3 MR. MINER: Okay, let me ask --

4 HEARING OFFICER TOMPKIN: -- give you an
5 opportunity --

6 MR. MINER: -- you this one question --

7 HEARING OFFICER TOMPKIN: -- no
8 questions, one final comment. Then we will move
9 to the next speaker.

10 MR. MINER: My comment will be this, and
11 I will try and make it as brief as possible. I
12 feel like, as a citizen of Tracy, number one, I
13 have not been informed of this. I found out by
14 word of mouth.

15 Number two, apparently my City Council
16 is not even very much aware of this, because they
17 just got in the loop of this process.

18 You, sir, yourself, don't seem to be too
19 in the loop. You don't know about the things
20 going on around us. The five power plants that
21 the other gentleman brought up.

22 Things seem to me that we are rushing
23 ahead because of an arbitrary deadline for their
24 contract. Now, I respect their contract, but my
25 family's health, my daughter's health, and the

1 health of all these people needs to be addressed.

2 And your rushing is not going to work.

3 Just like it didn't work down in San
4 Jose. I don't think you're going to pull this
5 over our faces, because now we know. Now we know.

6 PRESIDING MEMBER PERNELL: Thank you
7 very much.

8 (Applause.)

9 HEARING OFFICER TOMPKIN: Clare Atkins.

10 MS. SARVEY: I'm not going to make a
11 comment or anything. I think what is confusing
12 the audience --

13 HEARING OFFICER TOMPKIN: Well,
14 actually, I'd prefer to finish with the cards that
15 we have, then if time permits, we may give you an
16 additional opportunity. So I'm going to ask you
17 to take your seat, Ms. Sarvey, and we'll proceed
18 to Clare Atkins.

19 MS. SARVEY: Okay.

20 MS. ATKINS: My name is Clare Atkins.

21 My property is on Lammers Road, I'm adjacent to
22 the property that you gentlemen are wishing to
23 purchase and build some kind of a power plant.

24 My concerns are health, property values
25 for my property. I'm concerned with that. I'm in

1 the South Shulte project, and they send me maps
2 and tell me what I'm going to do with my property,
3 and what's going to happen with it.

4 And then something like this power plant
5 comes into effect, and there goes my dreams. This
6 good neighbor I'm hearing from the audience, a
7 good neighbor will inform you on things that are
8 happening. I get letters from Site 300 on every
9 burn day. Site 300 is a lot further than this
10 power plant that's going in.

11 I was not informed at all except for
12 through word of mouth from my neighbors who are
13 all very upset about this power plant. We hear by
14 word of mouth. That's not a good thing.

15 Site 300 at least had the decency to
16 write letters and mail them to every landowner,
17 homeowner in the community, when they have
18 something going on there that will affect our air
19 pollution or the noise control. They at least
20 communicate with us.

21 If you're such good neighbors, I think
22 it was not your duty, but their duty over here to
23 inform everyone in the community on what's going
24 on. If this power plant is such a great thing, I
25 don't think you'd be sneaking in the back door

1 trying to get it done.

2 (Applause.)

3 MS. ATKINS: As far as scheduling, are
4 there any contracts right now that would affect
5 these people, like water contracts, perhaps?
6 Or -- the scheduling seems to have to be on
7 schedule. And that brings questions to me, why
8 does it have to be on schedule?

9 HEARING OFFICER TOMPKIN: Well, I'll
10 just note for the record that this is primarily a
11 scheduling hearing, and that's why we've been
12 discussing scheduling. And why it's been a
13 primary topic.

14 As the Commissioner has indicated to
15 you, the schedule has not yet been set. It will
16 be taken under advisement, and a hearing order
17 will issue.

18 MS. ATKINS: If the schedule is moved
19 up, or say five months, would that affect the
20 power plant? Or could the power plant still go
21 through?

22 HEARING OFFICER TOMPKIN: Well, the
23 Committee determines the appropriate schedule.
24 There will be no license issued unless the project
25 meets all the legal requirements. So it's not

1 simply a matter of timing, it's whether or not the
2 applicant complies with the legal requirements.

3 That is what the Committee will consider
4 when they set their schedule, when they conduct
5 evidentiary hearings when this process goes
6 forward.

7 I understand that a lot of you, for
8 whatever reason, didn't get the notice that you
9 felt you would have liked. We're trying to make
10 sure that that doesn't happen, and that those
11 individuals that are here today will receive the
12 proper notice.

13 But we're not prepared to set a schedule
14 now. We're not prepared to just roll over and
15 say, well, take your time, whenever. That's not
16 how the process works. So we will issue a hearing
17 order; you will be advised when the next
18 proceeding occurs. And hopefully you'll have an
19 opportunity to speak with the applicant or the
20 Public Adviser or whoever you need to, to have
21 your concerns addressed.

22 MS. ATKINS: Okay, and one other
23 question. Why is it that the property that you
24 guys are interested in, is there not any other
25 properties that are more affordable in areas say

1 the middle of the desert?

2 (Laughter.)

3 (Applause.)

4 MS. ATKINS: It just seems to me you're
5 going to close to such a fine community, you're
6 going to put a dent in our community. We're very
7 close knit, as you can see, we heard by word of
8 mouth, not by tv's, not by newspaper, but by word
9 of mouth.

10 We don't want you here, to put it very
11 bluntly. But we --

12 (Applause.)

13 MS. ATKINS: -- wouldn't mind if you
14 went somewhere away from, and not just our
15 community, but any community. Go away from, so
16 you won't damage anybody's property or health or
17 air space.

18 And then I think people would be okay
19 with it.

20 (Applause.)

21 PRESIDING MEMBER PERNELL: Thank you. I
22 just want to note that the applicant does have a
23 responsibility to the community. And they should
24 be reaching out to the community and the various
25 organizations to let them know what they're

1 proposing.

2 So, this is --

3 MS. ATKINS: They are not reaching out
4 to any of the members of the community.

5 PRESIDING MEMBER PERNELL: I'm beginning
6 to understand that, but I don't want to --

7 (Laughter.)

8 PRESIDING MEMBER PERNELL: It is not
9 just the Commission's responsibility, but I do
10 think that the applicant has a responsibility to
11 reach out to the community, as well. So your
12 point is very well taken on that issue. Thank
13 you.

14 MR. GRATTAN: Can we respond to that?

15 PRESIDING MEMBER PERNELL: Yes.

16 HEARING OFFICER TOMPKIN: You may.

17 MR. WHEELER: We have attempted to
18 respond to the community -- Doug Wheeler, GWF.

19 We have attempted to reach out to the
20 community. We have held -- we met with a group of
21 citizens from the Redbridge group. We have spoken
22 to a number of homeowners on Lammers Road.

23 I apologize --

24 (Audience interruption.)

25 MR. WHEELER: -- if --

1 (Audience interruptions.)

2 HEARING OFFICER TOMPKIN: Okay, we're
3 going to request that members of the audience
4 maintain their silence. If you're unable to
5 comply with that requirement, we will be required
6 to ask you to leave.

7 Mr. Wheeler, you may proceed.

8 MR. WHEELER: I'm sorry if we haven't
9 contacted you. We have contacted residents on
10 Lammers. And as I stated, we did ask the
11 Redbridge community, through the sales office, to
12 hold a meeting. There were 25 to 30 people that
13 attended that meeting.

14 It's my understanding that Redbridge is
15 going to put together some kind of a subcommittee
16 to work with GWF. We have inquired several times
17 if that committee has been formed. We're anxious
18 to meet with the community. And we're anxious to
19 discuss our project with whether they be residents
20 close to the project, or a resident in Tracy
21 that's five miles away.

22 We believe that this project is a good
23 project. It's clean. We don't believe that there
24 are any public health issues that haven't been
25 addressed. If we felt that there was going to be

1 an impact to the community, we would not be siting
2 the plant where it's being sited.

3 Again, we've looked at the issues. We
4 want to obviously explain our project. And we're
5 open to any mechanism by which you feel that we
6 can do that. We've attempted to participate in
7 these workshops. There is a noticing procedure
8 that has already been discussed.

9 But, again, if there's a mechanism by
10 which we can communicate better with the
11 community, we want to do that. We're not trying
12 to sneak in the back door with this plant.

13 MS. ATKINS: I think if you wanted to do
14 that it would have been done before the process
15 was already started. That's the main problem I'm
16 having with it, is the process was already
17 started. You've already purchased this land, am I
18 correct?

19 MR. WHEELER: We have an option to
20 purchase the land, that's correct. One of the
21 requirements prior to submitting our application
22 is that we have some understanding where the
23 proposed project would be sited.

24 MR. MINER: Okay, and do you have any
25 contracts right now with say the water company in

1 the district? Would that affect your project?

2 MR. GRATTAN: You know, this is a
3 scheduling hearing. And --

4 (Parties speaking simultaneously.)

5 MR. GRATTAN: -- it's been opened up --

6 MR. MINER: Like I said, go in through
7 the back door, sneaking through it, and that's why
8 people are getting upset --

9 MR. GRATTAN: If I can speak for just a
10 second --

11 PRESIDING MEMBER PERNELL: Excuse me,
12 Mr. Grattan. Why don't we do this. The applicant
13 has said that they're willing to meet with the
14 community. I would suggest that those who want to
15 meet with the applicant, the community set up a
16 meeting or have the applicant set up a meeting,
17 and you can ask them all of those questions.

18 But it appears to me that they're not
19 reluctant to meet with the community, at least in
20 terms of the applicant. So why don't, after this
21 hearing is over, because you're correct, this is a
22 scheduling hearing, meet with the community. Set
23 up a meeting, have a community meeting and explain
24 your project to them.

25 MR. GRATTAN: Commissioner, that's done.

1 We'll do that. One thing that I do want to point
2 out to correct any misapprehension or
3 misconceptions. We met with the City of Tracy;
4 exchanged letters with Mr. Dean, as a matter of
5 fact, back in July. Prior to our even submitting
6 the application.

7 PRESIDING MEMBER PERNELL: The City,
8 meaning the City Council?

9 MR. GRATTAN: The City of Tracy. The
10 City of Tracy Planning Department.

11 MR. WHEELER: Mr. Dean.

12 PRESIDING MEMBER PERNELL: Thank you.

13 HEARING OFFICER TOMPKIN: Thank you.
14 The next speaker will be Harold Timmins.

15 MR. TIMMINS: My name is Harold Timmins
16 at 27001 South Hanson Road. I'm probably the
17 second closest person to their proposed power
18 plant.

19 And kind of have a little rebuttal
20 against your reason why you chose the spot, is I
21 believe that it was chose because you also have
22 the biomass plant. And naturally it'd be nice to
23 have it close to that plant.

24 And I realize that the gasline goes
25 through there, and that's the other reason. And

1 the transmission lines are already there. And
2 those are the three main reasons, which are
3 probably true, and it makes sense.

4 I realize that a power plant, the
5 natural gas power plants need to be put probably
6 in a vicinity where there's a natural gasline.
7 That makes sense, okay. The gasline runs
8 throughout California from way down south to all
9 the way into the Bay Area. So it has to be
10 probably somewhere where there's going to be
11 natural gas.

12 But, my feeling is that you're going to
13 have three power plants in Tracy area. And being
14 this one is very close to the community where the
15 City of Tracy is moving, I think it behooves you
16 to put in a fuel cell plant, not a turbine plant,
17 a fuel cell plant.

18 And most people in the audience don't
19 know what fuel cells are. They have not a
20 faintest idea what fuel cells are. I asked them
21 to go to www.fuelcells.org/ tonight on their
22 computers. That's a very layman's terms site.
23 Okay, there's a lot other sites that are a lot
24 more sophisticated than that. And find out about
25 these things.

1 They're virtually pollution free. And
2 the California Energy Department knows about
3 these. They say they promote them. Here's one
4 right here; here's a small plant in Santa Clara,
5 two megawatt, molten carbonate fuel plant. And
6 I'll pass it around to the people so they can look
7 at it. There's no smoke stacks; there's no
8 pollution whatsoever. Basically it's H2O coming
9 out the other end.

10 And I feel that the State of California
11 should say, okay, we're going to have three power
12 plants in Tracy, or possibly four, or whatever the
13 amount is. The ones that are going to be the
14 closest to the City's moving that way, let's say
15 they have to put in a fuel cell plant, okay.

16 Let's deny the type of fuel plant that
17 they want to put in and say, okay, do you want to
18 put one in, you put a fuel cell plant in. Let's
19 put the turbine one up in the hills somewhere
20 where it's away from the development that won't be
21 affected for several years. And that's my feeling
22 about it.

23 Cheri Davis, the last meeting, said that
24 you like to promote the different types of
25 alternative energy, right? And --

1 PRESIDING MEMBER PERNELL: We do promote
2 alternative energy.

3 MR. TIMMINS: Okay, this is a little
4 side question, then. You promote fuel cells, is
5 that true?

6 PRESIDING MEMBER PERNELL: We have some
7 fuel cell technology in stationary sources as well
8 as we're doing testing on fuel cells in
9 automobiles, yes.

10 MR. TIMMINS: Would you entertain the
11 idea for all residents in California have their
12 own power plant on their residence, the size of a
13 refrigerator? PlugPower makes them right now.
14 HPower makes them right now, 5 kilowatts of
15 uninterrupted power, continuous power. Why do we
16 need the power plants?

17 Let's promote this in California. Let's
18 get it going.

19 PRESIDING MEMBER PERNELL: Okay. Again,
20 the Commission promotes alternative energy, but
21 this is not the venue to promote alternative
22 energy. We're talking about a scheduling hearing.
23 I would be happy to talk to you, give you my card,
24 after this hearing is done. And we can sit down
25 and talk about alternative energy because that is

1 something that I'm concerned with, as well as the
2 Commission is promoting alternative energy.

3 But, again, and I don't want to seem
4 rude, but --

5 MR. TIMMINS: But you're for promoting
6 it, right?

7 PRESIDING MEMBER PERNELL: We are
8 promoting it.

9 MR. TIMMINS: Okay. For residential
10 use? For the average Joe Blow like me --

11 PRESIDING MEMBER PERNELL: There are
12 different --

13 MR. TIMMINS: -- or like these people?

14 PRESIDING MEMBER PERNELL: Well, sir,
15 there's --

16 MR. TIMMINS: \$8000 you can buy a 5
17 kilowatt power plant right now. Your own power
18 plant.

19 PRESIDING MEMBER PERNELL: Do you own
20 part of a company that is promoting fuel cells?

21 (Laughter.)

22 MR. TIMMINS: Pardon? No. I work for a
23 company that we do a lot of neat stuff like Site
24 300, and the lab. I work for a private company
25 like that, so I know about all kinds of things

1 like that.

2 PRESIDING MEMBER PERNELL: Okay, well, I
3 would love to talk to you after this hearing. But
4 we need to continue with the hearing.

5 MR. TIMMINS: Okay, I just don't want to
6 see any roadblocks put in the way of the average
7 Joe Blow wanting to put his own power plant in
8 this state. This can be a bonanza for this
9 country. This can be a Silicon Valley throughout
10 the United States if they allow -- if the
11 politicians and the power companies like these
12 people don't put the screw in the works to stop
13 this from happening.

14 (Applause.)

15 PRESIDING MEMBER PERNELL: Okay, thank
16 you.

17 HEARING OFFICER TOMPKIN: Scott Stewart,
18 there's an indication that he does not wish to
19 speak, so I'll read his comment.

20 "Please don't put this in my backyard."

21 The next speaker will be Robert Sarvey.

22 MR. SARVEY: Mr. Commissioner, Staff,
23 GWF, I'd like to share with you a conversation I
24 had today that is verifiable.

25 Mr. Ron Gernin, he's the president of

1 the Board of Realtors here in town, gave a
2 presentation today to 100 realtors. And the
3 subject of GWF peaker plant came up.

4 Of 100 realtors not one was aware that
5 this plant was being sited. They called me and
6 asked me to next Thursday come to their meeting
7 and inform them on GWF peaker, and the Tesla and
8 East Altamont plant.

9 I just wanted to reinforce that there is
10 not a lot of public knowledge of this plant. I'm
11 not pointing any fingers of why it didn't happen,
12 or what didn't happen, but I just wanted to say
13 that.

14 I also want to say that the expedite
15 review that GWF was granted, even though they
16 didn't qualify for it, is predicated on the
17 absence of public comment and controversy. The
18 only reason we are rushing is to accommodate GWF's
19 contract with the Department of Water Resources.

20 This is inappropriate. Full analysis
21 and review of the issues is the purpose of this
22 process. And I'm pleading with you to grant not
23 myself, as I have no excuse, but the intervenors
24 here and the other people in the public at least
25 three weeks to present their evidence, and their

1 list of expert witnesses.

2 And thank you very much for an
3 opportunity to speak. And I hope you'll listen to
4 my concerns because I understand you do, at this
5 proceeding, have the power to grant these
6 intervenors more time.

7 Thank you, Mr. Pernel.

8 PRESIDING MEMBER PERNELL: Thank you.

9 (Applause.)

10 HEARING OFFICER TOMPKIN: Greg Pace.

11 MR. PACE: My name is Greg Pace. I'm a
12 resident of Redbridge, also. I also have a
13 business on the other side of the power plant, so
14 I actually have two families I'm protecting in
15 coming to this meeting to get information.

16 I was somewhat aware of the power plant
17 and one of the previous meetings. I think it was
18 a walk-through at the job site like at 11:30 in
19 the morning, which was a little hard for a lot of
20 people to get there.

21 And I have been reading the newspaper
22 articles in regards to this plant, the Tesla
23 plant, and the other one was the East Altamont
24 Energy Center. Those were the three that I was
25 really aware of.

1 My concern is that based on our problems
2 last year that it just appears with all these,
3 there were supposedly nine or ten huge power
4 plants under construction. They were held up over
5 years not getting built, and rush to get some of
6 those done to offset the rolling blackouts that we
7 went through.

8 I've not heard whether or not they've
9 finished all the rest of them. I know one or two
10 of them got finished ahead of schedule. But I
11 don't know if the other eight or nine are done.

12 So, I'm just curious if -- and you don't
13 have to answer this, but my curiosity is are we
14 jumping the gun in running around building a bunch
15 of small power plants we really don't have to
16 have. Are we planning too much for the future?
17 Everybody's concerned about growth and controlling
18 it, and a lot of the things that are part of that
19 is having power, having water, having all the
20 other facilities.

21 So are we changing our thoughts and
22 going away from big plants to small plants, and
23 just going to plug them in all over the place?

24 I really think if we're going to do that
25 we need to verify the type of plant that works

1 best in that kind of area. I wrote on my card
2 that I'm against the plant, but that's only
3 because I haven't seen the whole report.

4 If you can prove to me that this plant
5 is going to run, it's going to be quieter than
6 what I already hear at night with the horns going
7 off and the pollution floating around in different
8 directions because of the wind that swirls here in
9 Tracy. And, you know, the noises aren't going to
10 be there, and things like that.

11 If that can be proved that this is going
12 to be a nice, clean plant, then I'm all for it.
13 Because we can use it. But I'm not for having
14 within a five-mile radius having five of these
15 plants. Doesn't make any sense. I don't think we
16 need all these plants.

17 We've already proved as citizens that we
18 don't need all the power that we were using.
19 We've all managed to cut back. We found out that
20 we paid too much for energy and now we can't sell
21 it for half of what we paid for it.

22 So I think there needs to be better
23 management and better thought put into this before
24 we go diving into building all these plants.

25 My other concern obviously is my

1 property value. I have a really nice home that
2 the developer, Redbridge, has built for us. And I
3 hate to see it not -- have a big, ugly power plant
4 next to it, because it will definitely damage the
5 value of the property.

6 And I already have been assured by some
7 people at city hall that our development is going
8 to be protected. It will not allow ugly
9 warehouses to go in, any kind of tilt-up
10 buildings. It will not allow any ungodly use of
11 property that we don't already have in existence.

12 We knew about the biomass when we moved
13 there. We knew about Owens-Illinois. We didn't
14 know there was a power plant coming. We were told
15 that the railroad wasn't going to use the railroad
16 tracks anymore. Now they're talking about using
17 them again.

18 So there's all kinds of things that do
19 change. And we all understand that. But we need
20 to be given all the information so we can make
21 informative decisions that agree with it or not.

22 I also have a question. I was told a
23 couple days ago that even though this is kind of
24 an informal process, that you don't have to have
25 us here. You don't have to have the public

1 hearing, so to speak. The ultimate and only
2 decision that matters is Governor Davis. He's the
3 only one that says yes or no based on what you
4 say. Is that true?

5 PRESIDING MEMBER PERNELL: No, that's
6 not.

7 MR. PACE: Okay.

8 PRESIDING MEMBER PERNELL: You know,
9 we've been kind of clearing up some rumors all
10 night.

11 (Laughter.)

12 MR. PACE: Right.

13 PRESIDING MEMBER PERNELL: The ultimate
14 decision on this licensing and any other license
15 that the Commission does is up to the five
16 Commissions.

17 Actually the Governor is out of the
18 process. Just like the Governor is out of the
19 process that the PUC has. So we're appointed by
20 the Governor, but we are an independent body. And
21 the statute set it up that way so there wouldn't
22 be any political influence one way or another.

23 So, that one is incorrect.

24 MR. PACE: Okay.

25 PRESIDING MEMBER PERNELL: But what you

1 did say, and I don't know if the gentleman still
2 has the map that he's, you know, addressed to the
3 press, but it's an old one. And the only thing
4 that we have, which is the latest maps, are --

5 MR. PACE: These three that you --

6 PRESIDING MEMBER PERNELL: -- the three
7 power plants. So, you know, there's a lot going
8 on. And the applicant has said, and your question
9 of whether it's quiet, clean and all of that, can
10 be addressed to the applicant.

11 And I think that both applicant and the
12 Commission needs to do a better job of reaching
13 out to the community. So, you know, I'm sitting
14 here and I'm not dodging the issue at all. And I
15 will say that we will do that.

16 But, again, if there's more information
17 needed about the plant, the applicant can
18 certainly provide that. And I would hope, and
19 they have agreed, to set up a community meeting
20 and talk about that plant, as well as meet with
21 other community folks.

22 So I think that's an invitation to get
23 some of those questions answered off the record,
24 or out of this proceeding.

25 MR. PACE: Right. Okay, my suggestion

1 on that meeting is that you either arrange it for
2 a night or two, in the evening so everybody can
3 get home; or pick a Saturday.

4 HEARING OFFICER TOMPKIN: Okay, why
5 don't you discuss that with him --

6 MR. PACE: So, but that's --

7 HEARING OFFICER TOMPKIN: -- off the
8 record.

9 MR. PACE: -- that's all, yeah, that was
10 just a suggestion --

11 HEARING OFFICER TOMPKIN: We still have
12 a stack of cards here.

13 MR. PACE: -- so, okay. That's all I
14 have to say, thank you.

15 PRESIDING MEMBER PERNELL: Sounds like
16 you want it around 7:00.

17 HEARING OFFICER TOMPKIN: Thank you.

18 (Laughter.)

19 MR. PACE: Well, I can make it by 6:00.

20 (Applause.)

21 HEARING OFFICER TOMPKIN: Okay, before
22 we proceed any further I wanted to announce that
23 the Public Adviser is circulating a sign-up sheet
24 through the audience to make sure that anyone who
25 wants to receive notice of future proceedings in

1 this matter sign the sheet.

2 And I'm announcing that so if you
3 haven't signed the sheet somewhere, and you want
4 to be on that mailing list, please find it and
5 sign up before you leave.

6 MS. BOS: It's actually on the back
7 table right here.

8 (Parties speaking simultaneously.)

9 HEARING OFFICER TOMPKIN: The next
10 speaker will be Ryan Yockey.

11 MR. YOCKEY: Good evening, Commissioner.

12 PRESIDING MEMBER PERNELL: Good evening.

13 MR. YOCKEY: My name is Ryan Yockey,
14 it's Y-o-c-k-e-y. I'm representing myself and my
15 wife.

16 First and foremost we understand that
17 these types of plants are necessary. And we're
18 all for them. I work in an industry that, for a
19 company that has the same type of problems that
20 you do.

21 What we do benefits the communities, but
22 it's not necessarily viewed as such a great thing
23 in their neighborhood.

24 And I understand that the reason you're
25 putting this plant there is because you're able to

1 tap the resources and use everything around there.

2 But, as I said, when we do this type of
3 thing we have to go through public hearings. And
4 one of the things we do is we try to be
5 profitable. But the other thing that we try to do
6 is take responsibility for the community and do
7 the right thing for the community.

8 And, Commissioner, what I'm asking you
9 is when you get to the point of making this
10 decision, it appears as though GWF has not taken
11 that responsibility. And I'm imploring you, on
12 behalf of all these people, to do that for them.

13 PRESIDING MEMBER PERNELL: Thank you.

14 (Applause.)

15 HEARING OFFICER TOMPKIN: Wayne
16 Yamamoto.

17 MR. YAMAMOTO: Wayne Yamamoto.
18 Y-a-m-a-m-o-t-o. Most of what I got to say is I
19 from Redbridge. And I guess you notice that
20 there's a lot of us from Redbridge because we're a
21 tight community. And that's what they instilled
22 in this community is to be really conscious of
23 what's going around us and to make it work.

24 We moved out of the Bay Area to come to
25 this neighborhood that's special. And it is

1 special. But, a lot of the things that I have to
2 say have been said already.

3 But I went through the internet today
4 because I'm in engineering, URS, we're slow, we're
5 not into power plants, we're into structures. But
6 I found out some pretty interesting things, like
7 Port of Oakland denied peaker power to go into
8 that area because of air quality.

9 Now, the Port of Oakland? I mean how
10 many people live in the Port of Oakland? I mean
11 you talking about Tracy, this is a residential
12 community. You know, we just bedroom folks, you
13 know, we just come here to live and go to work in
14 the Bay Area like I do.

15 But, if Port of Oakland turned you guys
16 down, I can't imagine -- well, it says it right
17 here. I mean, I -- California Energy Commission,
18 is that part of you guys?

19 PRESIDING MEMBER PERNELL: That's us.

20 (Laughter.)

21 MR. YAMAMOTO: Well, maybe you guys got
22 to update your publishing here --

23 PRESIDING MEMBER PERNELL: Perhaps we
24 got turned down.

25 MR. YAMAMOTO: But the other thing I

1 have that's kind of got me on the edge is that
2 there's something that says here that in three
3 years this is a single --

4 MS. TOWNSEND-SMITH: Simple cycle.

5 MR. YAMAMOTO: -- simple cycle. And in
6 three years you're going to turn into a
7 combination cycle?

8 MR. WHEELER: No, that's not correct.

9 MR. YAMAMOTO: From a simple cycle mode
10 to a combined cycle mode?

11 MR. WHEELER: I believe that was the
12 requirement of the four-month process. And I
13 think as previously --

14 MR. YAMAMOTO: It was a requirement from
15 Governor Davis?

16 MR. WHEELER: That's correct, yes.

17 MR. YAMAMOTO: You know, a lot of the
18 problems that we have right now is --

19 PRESIDING MEMBER PERNELL: Well,
20 that's --

21 MR. YAMAMOTO: -- from Governor Davis.

22 (Laughter.)

23 (Applause.)

24 PRESIDING MEMBER PERNELL: I'm not sure
25 that's --

1 MR. YAMAMOTO: Yeah, I -- we can't blame
2 you because your boss is --

3 PRESIDING MEMBER PERNELL: No, I'm not
4 defending the Governor here, but we got to get it
5 straight, because it was a -- it's not a
6 requirement from Governor Davis. And the process,
7 the former process that you're talking about
8 doesn't exist anymore because --

9 MR. YAMAMOTO: Right.

10 PRESIDING MEMBER PERNELL: -- it got
11 rescinded from the Energy Commission. And it also
12 was approved by the Energy Commission. So, you
13 know, as I've been all night, I guess I'm the
14 villain in this.

15 MR. YAMAMOTO: Well, you know, the --

16 PRESIDING MEMBER PERNELL: But, again,
17 we --

18 MR. YAMAMOTO: -- website is --

19 PRESIDING MEMBER PERNELL: Well, perhaps
20 it --

21 MR. YAMAMOTO: -- you know, you got to
22 update the website.

23 PRESIDING MEMBER PERNELL: Yeah, we
24 might want to make a note to update the website.

25 MR. YAMAMOTO: Maybe just delete the

1 whole thing and, you know, start something else.

2 (Laughter.)

3 PRESIDING MEMBER PERNELL: That
4 particular process that you're referring to was
5 rescinded by the Commission.

6 MR. YAMAMOTO: All right. But
7 basically, you know, this might be out of the
8 blue, but most of our power came from Canada and
9 the Northwest.

10 PRESIDING MEMBER PERNELL: We import
11 power, yes.

12 MR. YAMAMOTO: Right. Why don't we just
13 ask them to build up their power plants, and then
14 they can give us more power? You know, because
15 those Canadians are really nice folks.

16 (Laughter.)

17 MR. YAMAMOTO: You know, that might
18 work. But, anyway, thank you.

19 PRESIDING MEMBER PERNELL: Thank you.

20 (Applause.)

21 HEARING OFFICER TOMPKIN: Larry Gamino.
22 Is Larry Gamino here? Seeing no movement we'll
23 move on to Carolyn Yochum. Carolyn Yochum. Blane
24 Hill. We have Dennis Noble. Howard --

25 MR. SELIGMAN: I put that card in, I've

1 got one comment to make.

2 HEARING OFFICER TOMPKIN: Okay, could
3 you say your name and spell it again for me.

4 MR. SELIGMAN: My name is Howard
5 Seligman, S-e-l-i-g-m-a-n. I'm an attorney
6 representing the Tusso Family.

7 I'm glad that you're here this evening,
8 Mr. Pernell, I hope that you're enjoying yourself.
9 I can understand where you're coming from.

10 But I'm here to talk about the
11 procedural issues just briefly, and I can
12 appreciate your comments in connection with
13 there's nothing you can undo about what did or did
14 not happen in notifying this community
15 appropriately.

16 But it still raises due process issues.
17 And I think that you need to take into
18 consideration when you're making your decision on
19 scheduling, the fact that this community really
20 did not receive adequate notice of the process as
21 it started to this point. And whatever you do to
22 make -- correct it from this point forward does
23 not undo what has happened in the past.

24 And to that extent I am hoping that the
25 Committee of the two of you will take that into

1 account.

2 As part of it, and hopefully I'm
3 speaking for Mr. Weed and Mr. Noble, as well, I'm
4 asking you to reconsider the deadlines you imposed
5 upon us in connection with the statements that we
6 need to submit, and the testimony that we need to
7 submit by the 30th and the 31st.

8 And the reason for that are the
9 following: Number one, by your own notices you
10 established a deadline of today for people to
11 intervene. And all of our clients intervened
12 either yesterday or today.

13 And to expect their representatives to
14 be able to submit conference statements in spite
15 of the fact of what's in the notice, within five
16 days or six days, plus the testimony that is to be
17 presented is really unreasonable. And it goes to
18 the question as to whether or not your Commission
19 or your Committee has the discretion to make
20 further changes.

21 I know you have indicated that the
22 decision is up to you and to your co-Committee
23 member to make the scheduling issue. But that
24 also goes to the very issue of these other
25 documents.

1 And I'm aware, having seen it from Mr.
2 Tuso, what's in the notice that your counsel has
3 just presented to you. But if you're talking
4 about fairness, and if you're talking about due
5 process, and if you want to get appropriate
6 prehearing conference statements, and if you want
7 to get appropriate statements to set forth what
8 the testimony is going to be, and who the
9 potential witnesses are going to be, four or five
10 days doesn't cut it.

11 I mean there is no way. So I am again
12 asking you, within your discretion, to reconsider
13 that part of it. Taking that into account, along
14 with your scheduling.

15 Some of us feel that you're putting a
16 monkey on our back to give this five-day deadline.
17 And we obviously don't know what your scheduling
18 is going to be on the hearing process. But to be
19 fair, after what you've heard, and assuming that
20 there were no legal notices published in The Tracy
21 Press, and I'm assuming that for the time being
22 because I haven't heard anything to the contrary.
23 And the possibility that you really didn't give
24 fair due process notice to this community, I think
25 that you should hopefully rescind that deadline

1 that you imposed for next week, and make it fair
2 and give us reasonable time to do that.

3 Thank you.

4 (Applause.)

5 HEARING OFFICER TOMPKIN: Irene
6 Sundberg.

7 MS. SUNDBERG: Irene Sundberg. I really
8 came up here to introduce myself because I believe
9 someone on my behalf read a letter that I wrote to
10 the Commission.

11 I, too, believe that we were not fairly
12 given time for the scheduling of this project; and
13 we were not noticed correctly.

14 I would urge you to please reconsider
15 the scheduling and the deadlines that you've
16 imposed on those people that have decided they
17 need to intervene for their property rights.

18 Whether we get a peaker plant here or
19 some other type of energy plant here, the people
20 in our community have backed us, and they're the
21 voters of this community. And they're the ones
22 that support your paycheck and my paycheck. And I
23 think it's very important that we listen to them
24 with an open ear.

25 Thank you.

1 PRESIDING MEMBER PERNELL: Thank you.

2 (Applause.)

3 PRESIDING MEMBER PERNELL: Okay, that
4 concludes the cards that we have. What I'd like
5 to do is offer to staff if they have any final
6 comments, then to the applicant. And then I'd
7 like to make a couple of comments.

8 Before I do that, is there anyone else
9 in the audience who would like to address the
10 Committee? Please come forward. And you have to
11 state your name for the record.

12 MS. SARVEY: Susan Sarvey. I think the
13 confusion that is happening in the audience is you
14 made it very clear that the intervenors must be
15 statement specific on their prehearing conference
16 papers. And you keep saying that we, as the
17 public, will be able to speak at these hearings.

18 How can we speak at these hearings if
19 they need to be specific by the 30th. Why don't
20 we have to be specific by the 30th.

21 And why do they have to be specific by
22 the 30th, if you're going to just hear whoever
23 walks into the hearing anyway. Why can't there be
24 more time?

25 PRESIDING MEMBER PERNELL: What they

1 have done is request intervenor status.

2 Intervenor status comes with conditions. And so
3 they have a responsibility, and they have legal
4 counsel. And if there is an issue, staff also has
5 to know what that is so they can bring in expert
6 witnesses, as well as the applicant.

7 So, there's a question of fairness that
8 has been presented a lot tonight. And it's only
9 fair that the staff and the applicant know what
10 the issues are that the intervenors are going to
11 present or question, so they can be prepared to
12 respond to those.

13 Now, the public, the general public who
14 are not intervenors will also be on the record.
15 And the reason we have a reporter here is because
16 we have a record. So we want all of this
17 information, and all of it will be taken into
18 account.

19 And, again, I mean the question of
20 deadlines will be -- I've heard it a lot, so it
21 certainly will be considered by this Committee.
22 And that includes the intervenors, as well as the
23 scheduling hearing.

24 So those types of procedural issues the
25 Committee will address, and we will notify the

1 either intervenors, or when we do a scheduling
2 hearing, this body, if you'll sign up, will get
3 notice.

4 MS. SARVEY: So the specific notice is
5 just for the intervenors? We can still come?

6 PRESIDING MEMBER PERNELL: Yes. You're
7 welcome.

8 MS. SARVEY: Okay, then I have one other
9 question that I meant to ask earlier. And I could
10 be mistaken about this because I just started
11 learning about this whole energy thing in the last
12 eight weeks.

13 I was under the understanding that
14 whenever there was a public thing like this that
15 there would always be two Commissioners. Do we
16 have two Commissioners here?

17 PRESIDING MEMBER PERNELL: No. We have
18 one Commissioner here that's represented. And
19 what the Commission consists of is five
20 Commissioners.

21 MS. SARVEY: Yes.

22 PRESIDING MEMBER PERNELL: We have cases
23 up and down the State of California. And
24 Commissioner Laurie is not here. He has other
25 Commission business. So we do a lot more, as a

1 Commission, than just license power plants.

2 So in order to facilitate the Committee,
3 which the requirement is only one Commissioner
4 needs to be present at these types of hearings,
5 but there has to be one. There's not a
6 requirement for two. And what happens is we take
7 the testimony and I meet with the Committee, and
8 then the Committee decides.

9 MS. SARVEY: Is there a point in this
10 process where there are supposed to be two
11 Commissioners? Did I just not understand what I
12 read? I thought there was at some point in this
13 process, not necessarily with the public, but when
14 you're permitting a plant that two Commissioners
15 heard the application. Am I mistaken in this?

16 HEARING OFFICER TOMPKIN: I think what
17 you're referring to is the fact that there are two
18 individuals on the Committee. The decision is not
19 made by one Commissioner. It will always --

20 MS. SARVEY: Okay.

21 HEARING OFFICER TOMPKIN: -- be a joint
22 decision.

23 MS. SARVEY: Okay.

24 HEARING OFFICER TOMPKIN: There's not a
25 necessity for both of them to be physically

1 present. But there is a requirement that you have
2 at least a Committee of two to consider the
3 information that's being provided.

4 All this information will be
5 transcribed. In addition you have Commissioner
6 Pernell here physically, and he will communicate
7 that information, as well. Then a joint decision
8 will be made by the Committee of two members.

9 MS. SARVEY: So the decision on revising
10 the schedule and what's going to happen with the
11 plant, that will be made by two Commissioners, or
12 five Commissioners?

13 HEARING OFFICER TOMPKIN: The Committee
14 will make a recommendation to the total Commission
15 of five members. The Presiding Member --

16 MS. SARVEY: Will they get --

17 HEARING OFFICER TOMPKIN: -- of the
18 Committee will issue a proposed decision
19 recommending licensing or not licensing the plant.
20 Then the ultimate decision, the final decision is
21 made by the entire Commission.

22 MS. SARVEY: And will they be given
23 copies of all this testimony and these hearings so
24 they can read for themselves --

25 PRESIDING MEMBER PERNELL: That's

1 correct.

2 MS. SARVEY: -- what's going on with the
3 public? So when the final decision comes down,
4 all five Commissioners, even though they didn't
5 get the pleasure of meeting us, will know how we
6 feel?

7 (Laughter.)

8 MS. TOWNSEND-SMITH: Also, once this
9 particular project goes up for review in terms of
10 a decision, the community is still able to attend
11 the business meeting and make additional comments.

12 MS. SARVEY: Okay. So --

13 MS. TOWNSEND-SMITH: Okay, it's not
14 over.

15 MS. SARVEY: Right. So when you have
16 your business meeting --

17 MS. TOWNSEND-SMITH: Right.

18 MS. SARVEY: -- will we get notified of
19 that in our paper? In our newspaper? So that we
20 know to come.

21 MS. TOWNSEND-SMITH: Actually, I'm not
22 sure, but --

23 MS. SARVEY: How are you going to let us
24 know that it's time to come to the business
25 meeting?

1 MS. TOWNSEND-SMITH: Well, actually
2 being a part of this process you will know about
3 the decision, when this is on the business
4 meeting. I'm not sure in terms of the noticing
5 requirements of the business meeting. But you'll
6 know when this particular project is on the
7 business meeting.

8 PRESIDING MEMBER PERNELL: You will know
9 every step of this process. We have business
10 meetings and we can't notice, you know, the entire
11 state of our business meetings. However, a lot of
12 these questions can be answered if you just go to
13 our website.

14 MS. SARVEY: Okay.

15 PRESIDING MEMBER PERNELL: Because the
16 business meetings, times, dates and places, are
17 scheduled -- or posted on the website.

18 But, again, there are five Commissioners
19 that will make this decision. All of our meetings
20 are open meetings. The public is welcome.
21 Everyone is welcome to attend those meetings.

22 In terms of the scheduling hearing and
23 the intervenors' requests for information, that is
24 a decision that will be made by two Commissioners,
25 myself and Commissioner Laurie, who are the

1 Commissioners who are assigned to this particular
2 case.

3 MS. SARVEY: Will the intervenor be
4 notified when the business meeting is? So we --

5 PRESIDING MEMBER PERNELL: Everybody in
6 this room will be notified on every proceeding
7 concerning this case.

8 MS. SARVEY: So the intervenors can let
9 those of us in the public that might not know
10 because we're not intervenors, they can go ahead
11 and tell us when your meeting is. So we can be
12 sure to come see you again.

13 PRESIDING MEMBER PERNELL: Is your name
14 on that list?

15 MS. SARVEY: Oh, yeah.

16 PRESIDING MEMBER PERNELL: You will be
17 noticed.

18 MS. SARVEY: Okay. Looking forward to
19 meeting you again.

20 PRESIDING MEMBER PERNELL: It's a
21 pleasure.

22 (Laughter.)

23 MR. SARVEY: Bob Sarvey, Commissioner
24 Pernell. I don't know if you remember the first
25 time you met me. It was in this same room. And

1 at that time, although I wasn't very polished, I
2 was insisting that Mr. Tusso, Tracy Hills, South
3 Shulte all had property rights here. I insisted
4 that in this room. I believe it was November
5 28th.

6 I sent the Commission a letter; I
7 notified the staff. They were here, they were
8 present.

9 Then I sent a letter on December 25th
10 saying that Tracy Hills, South Shulte, Mr. Tusso,
11 nearby landowners, I don't want to exclude
12 anybody, two formal letters I've noticed. I feel
13 like I was never listened to, and I feel like the
14 reason there's so many people in this room and why
15 we're facing schedule problems now is because when
16 I raised these issues, GWF, staff and, I
17 apologize, Mr. Commissioner, no one listened to
18 me.

19 And I raised these issues. And I feel
20 now that we're in a situation where these
21 gentlemen over here and lady are being forced to,
22 in five days, six days, examine all those binders
23 over there, five very large binders which took me
24 two months just to scratch the surface of, and
25 they're supposed to present expert witnesses in

1 five days, come up with expert witnesses in all
2 these areas, and what I can say is that as an
3 intervenor I'm very frustrated because I was not
4 listened to.

5 These people knew these things existed.
6 I tried to tell you. I tried to tell staff. I've
7 been doing my --

8 PRESIDING MEMBER PERNELL: Okay, I'm --

9 MR. SARVEY: I'm doing my best to do my
10 job and I'll finish this real quick.

11 PRESIDING MEMBER PERNELL: Right.

12 MR. SARVEY: But I just want to --

13 PRESIDING MEMBER PERNELL: I have a
14 question for you once you get done.

15 MR. SARVEY: -- I want to plead with you
16 one more time, Mr. Pernell, I'm sorry, give these
17 people at least three or four weeks to prepare.
18 You don't have to give me ten more seconds. I'm
19 through, thank you.

20 PRESIDING MEMBER PERNELL: Well, again,
21 I will take this back. The Committee will decide.
22 But, as I recall you were on the site visit?

23 MR. SARVEY: Yes, I was, sir.

24 PRESIDING MEMBER PERNELL: And so you've
25 been following this process all the way through?

1 MR. SARVEY: And I deserve no more time.

2 PRESIDING MEMBER PERNELL: No, that's
3 not what --

4 (Laughter.)

5 PRESIDING MEMBER PERNELL: I guess my
6 question for you is how did you know about that?

7 MR. SARVEY: Because a friend of mine
8 told me about a little bitty tiny article about
9 this big at the end of the Public Events Section
10 saying there was a peaker plant going somewhere in
11 Tracy. And I said, what? Because most people
12 that know me in this room know I'm involved in a
13 lot of environmental issues.

14 And that's how I came to notice this.
15 But, what I'm saying is you have the power right
16 now, don't leave anybody in suspense. Tell these
17 ladies and gentlemen over here they have three or
18 four weeks. And I'm pleading with you to do that.
19 I know you're a fair man. I know you'll make the
20 right decision. And I thank you very much.

21 PRESIDING MEMBER PERNELL: Well, thank
22 you --

23 (Applause.)

24 PRESIDING MEMBER PERNELL: -- for the
25 vote of confidence. However, I do have to confer

1 with my colleague. And so, who is part of the
2 Committee. But everyone will be noticed, that's
3 here, of the scheduling and if there's any
4 additional time for the intervenors. You will get
5 notice of that.

6 MR. SARVEY: Thank you, sir.

7 AUDIENCE SPEAKER: Do you know when that
8 will be?

9 PRESIDING MEMBER PERNELL: As soon as
10 the Committee meets and decides.

11 AUDIENCE SPEAKER: You got next week as
12 a deadline.

13 PRESIDING MEMBER PERNELL: I understand
14 that.

15 (Laughter.)

16 MS. LOWNY: Monica Lowney. I just have
17 just a couple, two or three issues that I want to
18 point out.

19 One main question that I have that I
20 believe GWF can answer, or yourself, is my
21 understanding is a peaker plant is intended to not
22 run 24/7. It is intended to kick into gear when
23 we're having power crisis issues.

24 So my question is what percentage of the
25 time is this plant expected to be in operation?

1 PRESIDING MEMBER PERNELL: We'll have
2 the applicant answer that question. Or direct you
3 to where it's at.

4 MR. GRATTAN: I'll answer your question
5 very quickly. The contract with DWR, and we've
6 been very upfront about this, is for up to 4000
7 hours at their option, at their call.

8 We have asked that the project be
9 permitted for 8000 hours, and we have secured air
10 emission reduction credits for that full 8000
11 hours. We do not expect that we will be operating
12 that much. And those emission reduction credits
13 are there basically for the benefit of the air
14 quality.

15 MS. LOWNY: Thank you. And, as the
16 gentleman just expressed, 4000 hours is what is
17 required based on their contract. However, they
18 want to become permitted to operate 8000 hours.

19 My understanding is that's close to 80
20 or 90 percent of time. So, although this is a
21 peaker plant, -- okay, 21 hours a day -- this is a
22 peaker plant, which I'm assuming just from
23 information I've been given, a typical peaker runs
24 maybe 30 percent, around that arena of time.

25 But if we're talking about it running

1 90, 91 percent of the time, are these plants
2 designed to handle this type of hours and
3 emissions? Will this plant run less efficiently?
4 And since the gentleman from GWF just stated that
5 4000 hours is all that is needed for his contract,
6 I would like to urge the CEC to only permit them
7 for 4000 hours for their contract, just to insure
8 residents of Tracy that this plant will not be
9 running on an almost continuous basis.

10 My other point of issue, I just want to
11 give you a map that the gentleman who was up here
12 earlier, Brian Pekari, regarding the other plants
13 in Tracy. There are approximately six in the
14 Tracy area. One is under 49 megawatts, near the
15 GWF plant.

16 Then we have the GWF peaker project,
17 which is 169 megawatts. We have a UET plant which
18 is a 500 megawatt plant that our City is
19 considering cutting a deal with, within our city
20 limits, to handle our wastewater in their cooling
21 process.

22 We have Sunlaw Energy's which is 120
23 megawatt plant, which is near the Lake -- on the
24 outskirts of Tracy. But then we have the two big
25 guys; we've got the Calpine project which we have

1 pictures of right outside the door, which is an
2 1100 megawatt plant. And we have the Tesla Power
3 project which is 1000 megawatt plant.

4 Although these plants are on the Alameda
5 County line, just barely, they border San Joaquin
6 County, and they are on our side of the Altamont,
7 which means we will receive all of the negative
8 air emissions from these two very large power
9 plants. However, the offsets will be granted in
10 Alameda County. And that doesn't seem quite
11 right.

12 So I hope the CEC would like to consider
13 having both these two projects issue their offsets
14 within the San Joaquin County, opposed to Alameda
15 County.

16 And my last point of interest is simply
17 that I do have an environmental background. I
18 understand a lot of the verbiage in your
19 literature. However, most of these property
20 owners would definitely need more time to
21 research, review this technical information to be
22 given a fair opportunity to respond.

23 I personally have been in contact and
24 with some state agencies trying to collect data.
25 And as you know, the public process to do so is

1 you need to send -- fill out a release form, mail
2 it in. A staff member will get back to you within
3 a couple weeks. You tell them what you'd like
4 copies of. They make copies; they charge you 10
5 cents a copy; and then they mail it to you.

6 Well, that is a three- to four-week
7 process. So, again, I would like to ask for a
8 time extension.

9 Thank you.

10 PRESIDING MEMBER PERNELL: Thank you.

11 (Applause.)

12 PRESIDING MEMBER PERNELL: Okay, at this
13 point I'd like to, if there's no one else in the
14 audience that we haven't heard from -- yes? You
15 have to state your name for the record, please.

16 MR. CHUN: Right. My name is Lance
17 Chun, C-h-u-n. I'm a resident of Tracy. I'm
18 actually new to the City; moved November of 2000.

19 Anyway, I've been to the meetings, as
20 Bob Sarvey, since the beginning. And I think some
21 of the anger here actually is misdirected, but
22 I'll go on public record noting that I'm against
23 the power plant.

24 The City of Tracy, the City Council and
25 the Mayor, they actually were aware of this. But

1 in the previous meeting, the gentleman that was
2 here from the Planning Commission, was at the
3 meeting. He didn't say anything about it. He was
4 here, he just accepted everything.

5 I think a lot of this energy and this
6 anger should be directed at our own City Council.
7 We should be there at the February 5th meeting.
8 And to make it very very clear to the City Council
9 that, we, as citizens of Tracy, do not want this
10 power plant.

11 And the Commissioners of the California
12 Energy Commission has not granted a certification
13 to any power plant except one, the Calpine one in
14 San Jose, when the County of a power plant and the
15 City of a power plant doesn't want a power plant
16 built, they do not say yes to it.

17 All right, so what we need to do is we
18 need to tell San Joaquin County government that we
19 don't want -- they already approved this, our own
20 County said yes to this process. So we've got to
21 convince the County to say no to this power plant,
22 and to convince the City.

23 The City was indifferent. They came
24 here, one of the guys and just listened and didn't
25 say anything, because, you know, most of you guys

1 didn't know about this. But, as I'm finding out,
2 you guys are finally knowing about this, and it's
3 great.

4 First time I came here I was kind of
5 appalled that the apathy the City had towards the
6 power plant being built. But now I see it's
7 because you guys weren't aware. Now that you are
8 aware, it's great, because we can do something
9 about this. Talk to the County, and talk to our
10 own City government, and let them know.

11 I think once -- in fact, this time the
12 City found out, and they did send a
13 representative. Now it sounds like they're going
14 to do something about this. But they were
15 indifferent before.

16 So you got to apply the public pressure
17 to our own City government and tell them that this
18 is not okay with us.

19 That's all I have to say. Thank you
20 very much.

21 (Applause.)

22 PRESIDING MEMBER PERNELL: Thank you.

23 MS. AGUIRRE: Can I just --

24 PRESIDING MEMBER PERNELL: Yes, ma'am.

25 MS. AGUIRRE: -- the last one. And this

1 is to the Commission and everybody else.

2 This is probably the first time that I
3 will, you know, say something positive about the
4 City Council. The reason why the City Council has
5 become more aware of what's going on is because a
6 group of us went to them at the last City Council
7 meeting and tried to get them to understand how
8 concerned we were about the issues of cumulative,
9 health and environment and everything else.

10 So the City Council is beginning to
11 understand that there is a large group of us that
12 really takes this very seriously. And because we
13 did that, okay, they are now much more willing to
14 try to do something about it.

15 So, I mean, you know, people who live in
16 Tracy understand about the City Council. That
17 unless groups of us show up there on a particular
18 issue, you know, it's very difficult for some of
19 them to get involved.

20 So, all I'm saying is that I think that,
21 you know, some time might be wise to be given to
22 this whole process to let us continue working with
23 the City Council for them to understand how
24 important all of these issues are to us.

25 Thank you.

1 PRESIDING MEMBER PERNELL: Thank you.

2 (Applause.)

3 PRESIDING MEMBER PERNELL: Is there
4 anyone else in the public?

5 At this time I'd like to see if the
6 staff has any closing comments. Seeing none,
7 applicant, any closing comments?

8 MR. GRATTAN: Yeah, I'll be real quick,
9 grab my two microphones and be real quick.

10 First, Mr. Yamamoto, the Port of
11 Oakland, we've never done anything with the Port
12 of Oakland. We've never been --

13 MR. YAMAMOTO: Yeah, well, they got
14 peaker on the website.

15 MR. GRATTAN: Yeah, but this isn't GWF.
16 GWF had nothing to do with the Port of Oakland.

17 MR. YAMAMOTO: Okay.

18 MR. GRATTAN: Okay. And it doesn't say
19 so in there.

20 MR. YAMAMOTO: But it's a peaker power
21 plant that you guys are going to do, right?

22 MR. GRATTAN: I don't know what kind of
23 peaker power plant it is.

24 Next, community outreach. We certainly
25 heard a lot. And listened a lot and heard a lot.

1 And we would be real pleased to schedule a
2 community meeting and to do it at a time
3 convenient to the community, and to do it real
4 soon.

5 Schedule. I think that we can keep a
6 reasonable schedule and still allow for
7 participation of the intervenors. Certainly allow
8 for participation of the public.

9 Mr. Tusso. Mr. Seligman, Mr. Tusso is
10 your client?

11 MR. SELIGMAN: Yes.

12 MR. GRATTAN: Mr. Tusso --

13 MR. SELIGMAN: As of yesterday.

14 MR. GRATTAN: Yes. You were here, Mr.
15 Tusso, at our initial site visit, correct?

16 MR. TUSO: I didn't attend the site
17 visit, but I was here the --

18 MR. GRATTAN: You were at the
19 informational hearing --

20 MR. TUSO: Right.

21 MR. GRATTAN: -- back in November, okay.

22 Next, I would urge you, all of you concerned with
23 this project, read the staff report, and read the
24 amendment to the staff report which is going to
25 come out on the 31st of January.

1 Staff works real hard; staff is real
2 good. They drive us crazy. But this is a very
3 thorough document which might put some of your
4 concerns to rest, and certainly might explain some
5 of the things that you may be confused about.

6 It may not seem like it, but it's been a
7 pleasure to be here tonight. And I'd like to
8 thank you all, and I'd like to thank the Hearing
9 Officer and the Commissioner and the
10 Commissioner's Assistant, and staff for conducting
11 the hearing.

12 Thank you.

13 (Applause.)

14 PRESIDING MEMBER PERNELL: Thank you,
15 Mr. Grattan. Let me just say first that I
16 appreciate --

17 MS. BOS: Can I just say something real
18 quick? Sorry.

19 PRESIDING MEMBER PERNELL: Okay, we have
20 our Public Adviser.

21 MS. BOS: I just wanted to say I have in
22 my car for those people that just intervened today
23 and yesterday, I do have the application for
24 certification with me in the car in case you want
25 them tonight, so we don't have to mail them. It's

1 very very heavy.

2 I'm willing to mail it, but it's in the
3 car. This is only for those people that are
4 intervenors.

5 PRESIDING MEMBER PERNELL: Okay, thank
6 you.

7 Let me just say that first of all I
8 appreciate the community coming out. And I know
9 that this is a sometimes confusing proceeding.
10 But you have stayed here, and you have been very
11 adamant about certain issues. And the Commission,
12 and certainly myself, have heard you.

13 And we want to move on your concerns.
14 And I will take those concerns, along with the
15 fact when I'm talking to my fellow Commissioner
16 about this, I will take the concerns of the
17 community, the intervenors, the City back. And we
18 will put out a schedule.

19 I will insure that there is proper
20 notice of all of our proceedings that are related
21 to this case.

22 Let me say also that there is no
23 guarantee that the plant will be built, or that
24 they will even get a license. This is the
25 beginning of the hearing process. We're going to

1 have an evidentiary hearing, and all of you are
2 going to know about it, and you're all invited
3 back.

4 I understand about communities and
5 community concerns, and having kids and all of
6 that because I've been there.

7 So, the way I conduct my hearings is to
8 allow the community an opportunity to address, to
9 comment on their concerns. And I'm going to do
10 that.

11 And we've had, a gentleman asked me
12 earlier -- I'm still on the record, so let me --
13 we'll talk about this a little later.

14 But other communities come out. I mean
15 we were in L.A., there were 1000 people out there.
16 So, the point is, and I think the gentleman that
17 said that, you know, you have to be organized, you
18 have to go to your elected officials and let them
19 know what your concerns are, you've certainly let
20 us know.

21 But we are in a process. The applicant
22 has a right to go through this process. And
23 that's what we're trying to do, is get through the
24 process.

25 We will get to the end. There's no

1 doubt about that. But I want you to feel
2 comfortable that it's not a done deal, and the
3 rumor mills have been flying all around, but we
4 would like to be able to put some of those
5 concerns to rest.

6 The applicant has said that they want to
7 have a community meeting. I'm not sure who's
8 going to take the lead on that, but perhaps maybe
9 you can have a town hall meeting and have some of
10 your representatives organize that town hall
11 meeting.

12 There was a gentleman that talked about
13 a real estate meeting. Perhaps that's a meeting
14 the applicant can go to, to talk about these
15 issues.

16 So there's a tremendous amount of work
17 to be done. But I can assure you we will get
18 through this process. Your concerns will be
19 heard. And we will make the scheduling order
20 accordingly.

21 Again, I can't sit here and do that now
22 because I have a colleague, and we, as a
23 Committee, have to do that together.

24 The other thing I want to say is it's a
25 pleasure coming to Tracy. You guys are not as

1 bad, you're vocal, and you should be. But it's a
2 pleasure coming to Tracy. And, you know, I'm on
3 the hot seat, but that's why I carry the Roloids.

4 (Laughter.)

5 PRESIDING MEMBER PERNELL: So, if
6 there's nothing else, I will be around for awhile
7 if anybody wants to talk to me. I know that
8 someone was mentioning fuel cells. So I'll make
9 myself available after the meeting is adjourned.

10 Yes, sir? One final comment and then
11 we'll close the hearing.

12 MR. TUSO: Okay, Chuck Tusso on Lammers
13 Road. I was going to just sit there quiet all
14 night, but I just feel compelled to come up here
15 and say a couple of things.

16 The main thing is we're talking about
17 fairness of time. And my mom and dad, they've
18 owned this property that I'm here trying to
19 represent and protect for them. And they've been
20 out there since 1948. This is their retirement.
21 And they've waited a long time.

22 So, you know, to wait an extra couple,
23 two or three or four weeks on an impact on my
24 family that will be a large magnitude, I don't
25 think is asking a lot for a couple of 80-year-old

1 people who are, this is their life.

2 So, you know, keep that in mind and we
3 appreciate that.

4 And I think I speak for some of my
5 neighbors, too. The Traina family, they've been
6 out there since we have. The Zambetti family, and
7 there's a few other ones out there.

8 But, you know, this is a very critical
9 thing to all those people out there. It's not
10 something that's, you know, it's come upon us and
11 we have to hire attorneys, and we have to spend
12 time away from our families. So we really feel
13 that it's already impacted our quality of life.
14 That's the way I feel.

15 And, you know, we have to be here, and
16 this isn't something that's easy for me, to get up
17 in front of a crowd. I don't do this all the
18 time, but I feel very compelled to be up here.

19 And I just hope you appreciate our
20 concern.

21 PRESIDING MEMBER PERNELL: Thank you.

22 (Applause.)

23 PRESIDING MEMBER PERNELL: Okay, if
24 there's nothing further to come before this
25 Committee, nothing further to come before this

1 Committee, this hearing is adjourned.

2 Thank you, all.

3 (Whereupon, at 9:13 p.m., the prehearing
4 conference was concluded.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of January, 2002.

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